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THE
ENGLISH AND EMPIRE DIGEST
WITH
COMPLETE AND EXHAUSTIVE
ANNOTATIONS.

VOLUME XVI.

THE ENGLISH AND EMPIRE DIGEST

WITH
COMPLETE AND EXHAUSTIVE
ANNOTATIONS

BEING

A COMPLETE DIGEST OF EVERY ENGLISH CASE REPORTED
FROM EARLY TIMES TO THE PRESENT DAY, WITH ADDITIONAL
CASES FROM THE COURTS OF SCOTLAND, IRELAND, THE EMPIRE
OF INDIA, AND THE DOMINIONS BEYOND THE SEAS,

AND INCLUDING

COMPLETE AND EXHAUSTIVE ANNOTATIONS GIVING ALL THE
SUBSEQUENT CASES IN WHICH JUDICIAL OPINIONS HAVE BEEN
GIVEN CONCERNING THE ENGLISH CASES DIGESTED.

VOLUME XVI.

*CONTEMPT OF COURT, ATTACH-
MENT AND COMMITTAL.*

*COURTS.
CROWN PRACTICE.*

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In this Volume English Cases reported up to 1st January, 1923, are included, and other cases are included so far as the Volumes of Reports of the same were available in London on that date.

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CURTESY.

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CUSTODY OF CHILDREN.

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CUSTODY OF DEEDS.

See MORTGAGE ; SALE OF LAND ; SETTLEMENTS.

CUSTODY OF PARISH DOCUMENTS.

See LOCAL GOVERNMENT.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS

A. C. (preceded by date)	Law Reports, Appeal Cases House of Lords, since 1890 (<i>e.g.</i> , [1891] A. C.)	Eng.
A. Jur. Rep.	Australian Jurist Reports	Aus.
A. L. T.	Australian Law Times	Aus.
A. R.	Ontario Appeals	Can.
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1841	Eng.
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842	Eng.
Adam	Adam's Justiciary Reports, (Scotland), 1893—(current)	Scot.
Add.	Addams' Ecclesiastical Reports, 3 vols., 1822—1826	Eng.
Agra	Agra High Court	Ind.
Agra F. B.	Agra High Court, Full Bench	Ind.
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833	Ir.
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841	Ir.
Aleyn	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649	Eng.
All.	New Brunswick Reports (Allen)	Can.
Alta. L. R.	Alberta Law Reports	Can.
Amb.	Ambler's Reports, Chancery, 2 vols., 1725—1783	Eng.
And.	Anderson's Reports, Common Pleas, fol., 2 parts in one vol., 1535—1605	Eng.
Andr.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740	Eng.
Anst.	Anstruther's Reports, Exchequer, 3 vols., 1792—1797	Eng.
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890	Eng.
App. Ct. Rep.	Appeal Court Reports	N.Z.
App. D.	South African Law Reports, Appellate Division	S. Af.
Architects' L. R.	Architects' Law Reports, 4 vols., 1904—1909	Eng.
Argus L. R.	Argus Law Reports	Aus.
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848	Scot.
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842	Ir.
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839	Eng.
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841	Eng.
Ashb.	Ashburner's Principles of Equity, 1902	Eng.
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current)	Eng.
Atk.	Atkyns' Reports, Chancery, 3 vols., 1736—1754	Eng.
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law	Eng.
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani	Eng.
B.	Barber's Gold Law	S. Af.
B. & Ad.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834	Eng.
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822	Eng.
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830	Eng.
B. & C. R. (preceded by date)	Reports of Bankruptcy and Companies Winding up Cases, 1918—(current) (<i>e.g.</i> , [1918—19] B. & C. R.)	Eng.
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870	Eng.
B. C. R.	British Columbia Reports	Can.
B. Dig.	Bose's Digest	Ind.
B. L. R.	Bengal Law Reports	Ind.
B. L. R. A. C.	Bengal Law Reports, Appeal Cases	Ind.
B. L. R. P. C.	Bengal Law Reports, Privy Council	Ind.
B. L. R. Sup. Vol.	Bengal Law Reports, Supp. Vol.	Ind.
B. W. C. O.	Butterworths' Workmen's Compensation Cases, 1907—(current)	Eng.
Bac. Abr.	Bacon's Abridgment	Eng.
Ball Ct. Cas.	Ball Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854	Eng.

Baild. ...	...	Baildon's Select Cases in Chancery (Selden Society, Vol. X.) ...	Eng.
Ball & B. ...	...	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814 ...	Ir.
Bankr. & Ins. R. ...	...	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855 ...	Eng.
Bar. & Arn. ...	...	Barron and Arnold's Election Cases, 1 vol., 1843—1846 ...	Eng.
Bar. & Aust. ...	...	Barron and Austin's Election Cases, 1 vol., 1842 ...	Eng.
Barn. Ch. ...	...	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741 ...	Eng.
Barn. K. B. ...	...	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734 ...	Eng.
Barnes ...	...	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760 ...	Eng.
Batt. ...	...	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826 ...	Ir.
Beat. ...	...	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830 ...	Ir.
Beav. ...	...	Beavan's Reports, Rolls Court, 36 vols., 1838—1866 ...	Eng.
Beav. & Wal. ...	...	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846 ...	Eng.
Beaw. ...	...	Beawes's Lex Mercatoria ...	Eng.
Bell, C. C. ...	...	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860 ...	Eng.
Bell, Ct. of Sess. ...	...	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792 ...	Scot.
Bell, Ct. of Sess. fol. ...	...	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795 ...	Scot.
Bell, Dict. Dec. ...	...	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833 ...	Scot.
Bell, Sc. App. ...	...	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850 ...	Scot.
Bellewe ...	...	Bellewe's Cases <i>temp.</i> Richard II., King's Bench, 1 vol. ...	Eng.
Belt's Sup. ...	...	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756 ...	Eng.
Ben. & D. ...	...	Benloe and Dalison's Reports, Common Pleas, fol., 1 vol., 1357—1579 ...	Eng.
Benl. ...	...	Benloe's (or Bendloe's) Reports, King's Bench and Common Pleas, fol., 1 vol., 1515—1627 ...	Eng.
Ber. ...	...	New Brunswick Reports (Berton) ...	Can.
Bing. ...	...	Bingham's Reports, Common Pleas, 10 vols., 1822—1834 ...	Eng.
Bing. N. C. ...	...	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840 ...	Eng.
Biss. & Sm. ...	...	Bisset and Smith's Digest ...	S. Af.
Bitt. Prac. Cas. ...	...	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876 ...	Eng.
Bitt. Rep. in Ch. ...	...	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884 ...	Eng.
Bl. Com. ...	...	Blackstone's Commentaries ...	Eng.
Bl. D. & Osb. ...	...	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848 ...	Ir.
Bli. ...	...	Bligh's Reports, House of Lords, 4 vols., 1819—1821 ...	Eng.
Bli. N. S. ...	...	Bligh's Reports, House of Lords, New Series 11 vols., 1827—1837 ...	Eng.
Bluett ...	...	Bluett's Isle of Man Cases ...	I. of M.
Bom. ...	...	Bombay High Court Reports ...	Ind.
Bom. A. C. ...	...	Bombay Reports, Appellate Jurisdiction ...	Ind.
Bom. O. C. ...	...	Bombay Reports, Original Civil Jurisdiction ...	Ind.
Bos. & P. ...	...	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804 ...	Eng.
Bos. & P. N. R. ...	...	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807 ...	Eng.
Bott ...	...	Bott's Laws Relating to the Poor, 2 vols. ...	Eng.
Bourke ...	...	Bourke's Reports ...	Ind.
Br. & Col. Pr. Cas. ...	...	British and Colonial Prize Cases, 3 vols., 1914—1919 ...	Eng.
Bract. ...	...	Bracton De Legibus et Consuetudinibus Angliæ ...	Eng.
Bro. Abr. ...	...	Sir J. Brooke's Abridgement ...	Eng.
Bro. C. C. ...	...	W. Brown's Chancery Reports, 4 vols., 1778—1794 ...	Eng.
Bro. Ecc. Rep. ...	...	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872 ...	Eng.
Bro. N. C. ...	...	Sir R. Brooke's New Cases, 1 vol., 1515—1558 ...	Eng.
Bro. Parl. Cas. ...	...	J. Brown's Cases in Parliament, 8 vols., 1702—1800 ...	Eng.
Bro. Supp. to Mor. ...	...	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols. ...	Scot.
Bro. Synop. ...	...	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827 ...	Scot.
Brod. & Bing. ...	...	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—1822 ...	Eng.
Brod. & F. ...	...	Broderick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864 ...	Eng.
Broun ...	...	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845 ...	Scot.
Brown. & Lush. ...	...	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866 ...	Eng.
Brownl. ...	...	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624 ...	Eng.
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714—1715 ...	Scot.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Buch.	Buchanan's Reports of the Supreme Court of the Cape of Good Hope, 1868—1879	S. Af.
Buch. A. C.	Buchanan's Reports of Appeal Court (Cape)	S. Af.
Buchan.	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813	Scot.
Buck	Buck's Cases in Bankruptcy, 1 vol., 1816—1820	Eng.
Bull. N. P.	Buller's Nisi Prius (published, London, 1772)	Eng.
Bulst.	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626	Eng.
Bunb.	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741	Eng.
Burr.	Burrow's Reports, King's Bench, 5 vols., 1756—1772	Eng.
Burr. S. C.	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776	Eng.
Burrell	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840	Eng.
C. A.	Court of Appeal Reports, 3 vols., 1867—1877	N.Z.
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841	Eng.
C. B.	Common Bench Reports, 18 vols., 1845—1856	Eng.
C. B. N. S.	Common Bench Reports, New Series, 20 vols., 1856—1865	Eng.
C. C. Ct. Cas.	Central Criminal Court Cases (Sessions Papers), 1834—(current)	Eng.
C. L. Ch.	Common Law Chambers	Can.
C. L. J.	Cape Law Journal	S. Af.
C. L. J. N. S.	Canada Law Journal, New Series, 1865—(current)	Can.
C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864	Can.
C. L. R.	Common Law Reports, 3 vols., 1853—1855	Eng.
C. L. R.	Commonwealth Law Reports	Aus.
C. L. R.	Calcutta Law Reporter	Ind.
C. L. R.	Cape Law Reports	S. Af.
C. L. T.	Canadian Law Times	Can.
C. L. T. Occ. N.	Canadian Law Times, Occasional Notes	Can.
C. P.	Upper Canada Common Pleas	Can.
C. P. D.	Law Reports, Common Pleas Division, 5 vols., 1875—1880	Eng.
C. P. D.	Cape Provincial Division Reports	S. Af.
C. R. [date] A. C.	Canadian Reports, Appeal Cases	Can.
C. T. R.	Cape Times Reports of the Supreme Court of the Cape of Good Hope	S. Af.
C. W. N.	Calcutta Weekly Notes	Ind.
Cab. & El.	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885	Eng.
Cald. Mag. Cas.	Caldecott's Magistrates' Cases, 1 vol., 1776—1785	Eng.
Calth.	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618	Eng.
Cam. Cas.	Cameron's Supreme Court Cases	Can.
Cam. Prac.	Cameron's Supreme Court Practice	Can.
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816	Eng.
Can. Com. Cas.	Commercial Law Reports of Canada	Can.
Can. Crim. Cas.	Canadian Criminal Cases, Annotated	Can.
Can. Ry. Cas.	Canadian Railway Cases	Can.
Car. & Kir.	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853	Eng.
Car. & M.	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1842	Eng.
Car. C. L.	Carrington's Treatise on Criminal Law	Eng.
Carl.	New Brunswick Reports (Carleton)	Can.
Carp. Pat. Cas.	Carpmael's Patent Cases, 2 vols., 1602—1842	Eng.
Cart.	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673	Eng.
Cart.	Cases on British North America Act (Cartwright)	Can.
Carth.	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700	Eng.
Cary	Cary's Reports, Chancery, 1 vol.	Eng.
Cas. in Ch.	Cases in Chancery, fol., 3 parts, 1660—1697	Eng.
Cas. Pract. K. B.	Cases of Practice, King's Bench, 1 vol., 1655—1775	Eng.
Cas. Sett.	Cases of Settlements and Removals, 1 vol., 1685—1727	Eng.
Cas. temp. Finch	Cases temp. Finch, Chancery, fol., 1 vol., 1673—1680	Eng.
Cas. temp. King	Select Cases temp. King, Chancery, fol., 1 vol., 1724—1733	Eng.
Cas. temp. Talb.	Cases in Equity temp. Talbot, fol., 1 vol., 1730—1737	Eng.
Cass. Dig.	Cassell's Digest	Can.
Ch. (preceded by date)	Law Reports, Chancery Division, since 1890 (e.g., [1891] 1 Ch.)	Eng.
Ch. App.	Law Reports, Chancery Appeals, 10 vols., 1865—1875	Eng.
Ch. Cas. in Ch.	Choyce Cases in Chancery, 1557—1606	Eng.
Ch. Ch.	Upper Canada Chancery Chambers Reports	Can.
Ch. D.	Law Reports, Chancery Division, 45 vols., 1875—1890	Eng.
Ch. Rob.	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808	Eng.
Char. Cham. Cas.	Charley's Chamber Cases, 1 vol., 1875—1876	Eng.
Char. Pr. Cas.	Charley's New Practice Reports, 3 vols., 1875—1876	Eng.
Chip.	New Brunswick Reports (Chipman)	Can.
Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822	Eng.
Cl. & Fin.	Clark and Finnely's Reports, House of Lords, 12 vols., 1831—1840	Can.
Cl. & Sc. Dr. Cas.	Clark and Scully's Drainage Cases	Can.

Clay. ...	...	Clayton's Reports and Pleas of Assizes at Yorke, 1 vol., 1631—1650	Eng.
Clif. & Rick. ...	...	Clifford and Rickards' <i>Locus Standi</i> Reports, 3 vols., 1873—1884	Eng.
Clif. & Steph. ...	...	Clifford and Stephens' <i>Locus Standi</i> Reports, 2 vols., 1867—1872	Eng.
Co. A. ...	...	Cook's Lower Canada Admiralty Court Cases ...	Can.
Co. Ent. ...	...	Coke's Entries ...	Eng.
Co. Inst. ...	...	Coke's Institutes ...	Eng.
Co. L. J. ...	...	Colonial Law Journal ...	N.Z.
Co. Litt. ...	...	Coke on Littleton (1 Inst.) ...	Eng.
Co. Rep. ...	...	Coke's Reports, 13 parts, 1572—1616 ...	Eng.
Coch. ...	...	Nova Scotia Reports (Cochran) ...	Can.
Cockb. & Rowe	...	Cockburn and Rowe's Election Cases, 1 vol., 1833 ...	Eng.
Coll. ...	...	Collyer's Reports, Chancery, 2 vols., 1844—1846 ...	Eng.
Coll. Jurid. ...	...	Collectanea Juridica, 2 vols. ...	Eng.
Colles ...	...	Colles' Cases in Parliament, 1 vol., 1697—1713 ...	Eng.
Colt. ...	...	Coltman's Registration Cases, 1 vol., 1879—1885 ...	Eng.
Com. ...	...	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740 ...	Eng.
Com. Cas. ...	...	Commercial Cases, 1895—(current) ...	Eng.
Com. Dig. ...	...	Comyns' Digest ...	Eng.
Comb. ...	...	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698 ...	Eng.
Con. & Law. ...	...	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843 ...	Ir.
Cong. Dig. ...	...	Congdon's Digest ...	Can.
Cooke & Al. ...	...	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834 ...	Ir.
Cooke, Pr. Cas. ...	...	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747 ...	Eng.
Cooke, Pr. Reg. ...	...	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742 ...	Eng.
Coop. G. ...	...	G. Cooper's Reports, Chancery, 1 vol., 1792—1815 ...	Eng.
Coop. Pr. Cas. ...	...	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838 ...	Eng.
Coop. temp. Brough. ...	...	C. P. Cooper's Cases temp. Brougham, Chancery, 1 vol., 1833—1834 ...	Eng.
Coop. temp. Cott. ...	...	C. P. Cooper's Cases temp. Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases) ...	Eng.
Cor. ...	...	Coryton's Reports ...	Ind.
Corb. & D. ...	...	Corbett and Daniell's Election Cases, 1 vol., 1819 ...	Eng.
Correspondances Jud. ...	...	Correspondances Judiciaires ...	Can.
Couper ...	...	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885 ...	Scot.
Cout. ...	...	Coutlees' Unreported Cases ...	Can.
Cout. Dig. ...	...	Coutlees' Digest ...	Can.
Cowp. ...	...	Cowper's Reports, King's Bench, 2 vols., 1774—1778 ...	Eng.
Cox & Atk. ...	...	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846 ...	Eng.
Cox, C. C. ...	...	E. W. Cox's Criminal Law Cases, 1843—(current) ...	Eng.
Cox, Eq. Cas. ...	...	S. C. Cox's Equity Cases, 2 vols., 1745—1797 ...	Eng.
Cox, M. & H. ...	...	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, 1 vol., 1846—1852 ...	Eng.
Cr. & J. ...	...	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832	Eng.
Cr. & M. ...	...	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834 ...	Eng.
Cr. & Ph. ...	...	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841 ...	Eng.
Cr. App. Rep. ...	...	Cohen's Criminal Appeal Reports, 1908—(current) ...	Eng.
Cr. M. & R. ...	...	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835 ...	Eng.
Craw. & D. ...	...	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846	Ir.
Craw. & D. Abr. C. ...	...	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838	Ir.
Cress. Insolv. Cas. ...	...	Cresswell's Insolvency Cases, 1 vol., 1827—1829 ...	Eng.
Cripps' Church Cas. ...	...	Cripps' Church and Clergy Cases, 2 parts, 1847—1850 ...	Eng.
Cro. Car. ...	...	Croke's Reports temp. Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641 ...	Eng.
Cro. Eliz. ...	...	Croke's Reports temp. Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603 ...	Eng.
Cro. Jac. ...	...	Croke's Reports temp. James I., King's Bench and Common Pleas, 1 vol., 1603—1625 ...	Eng.
Cru. Dig. ...	...	Cruise's Digest of the Law of Real Property, 7 vols. ...	Eng.
Cunn. ...	...	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735	Eng.
Curt. ...	...	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844 ...	Eng.
D. ...	...	Duxbury's Reports of the High Court of the South African Republic ...	S. Af.
D. C. A. ...	...	Dorion's Queen's Bench Reports ...	Can.
D. L. R. ...	...	Dominion Law Reports ...	Can.
Dalr. ...	...	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720 ...	Scot.
Dan. ...	...	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823 ...	Eng.
Dan. & Ll.	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829 ...	Eng.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Dav. & Mer.	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844
Dav. Ir.	Davy's (or Davys' or Davy's) Reports (Ireland), 1 vol., 1604—1611 ...	Eng.
Dav. Pat. Cas. ...	...	Davies' Patent Cases, 1 vol., 1785—1816 ...	Ir.
Day ...	...	Day's Election Cases, 1 vol., 1892—1893 ...	Eng.
Dea. & Sw. ...	...	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857 ...	Eng.
Deac. ...	...	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840 ...	Eng.
Deac. & Ch. ...	...	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835 ...	Eng.
Dears. & B. ...	...	Dearsley and Bell's Crown Cases Reserved, 1 vol., 1856—1858 ...	Eng.
Dears. C. C. ...	...	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856 ...	Eng.
Deas & And. ...	...	Deas and Anderson's Decisions (Scotland), 5 vols., 1820—1832 ...	Scot.
De G. ...	...	De Gex's Reports, Bankruptcy, 2 vols., 1844—1848 ...	Eng.
De G. & J. ...	...	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859 ...	Eng.
De G. & Sm. ...	...	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852 ...	Eng.
De G. F. & J. ...	...	De Gex, Fisher and Jones's Reports, Chancery, 4 vols., 1859—1862 ...	Eng.
De G. J. & Sm. ...	...	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865 ...	Eng.
De G. M. & G. ...	...	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols., 1851—1857 ...	Eng.
Delane ...	...	Delane's Decisions, Revision Courts, 1 vol., 1832—1835 ...	Eng.
Den. ...	...	Denison's Crown Cases Reserved, 2 vols., 1844—1852 ...	Eng.
Dick. ...	...	Dickens' Reports, Chancery, 2 vols., 1559—1798 ...	Eng.
Dig. ...	...	Justinian's Digest or Pandects ...	Eng.
Dirl. ...	...	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1665—1677 ...	Scot.
Dods. ...	...	Dodson's Reports, Admiralty, 2 vols., 1811—1822 ...	Eng.
Donnelly ...	...	Donnelly's Reports, Chancery, 1 vol., 1836—1837 ...	Eng.
Doug. El. Cas. ...	...	Douglas' Election Cases, 4 vols., 1774—1776 ...	Eng.
Doug. K. B. ...	...	Douglas' Reports, King's Bench, 4 vols., 1778—1785 ...	Eng.
Dow ...	...	Dow's Reports, House of Lords, 6 vols., 1812—1818 ...	Eng.
Dow & Cl. ...	...	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832 ...	Eng.
Dow. & L. ...	...	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849 ...	Eng.
Dow. & Ry. K. B. ...	...	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—1827 ...	Eng.
Dow. & Ry. M. C. ...	...	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827 ...	Eng.
Dow. & Ry. N. P. ...	...	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823 ...	Eng.
Dowl. ...	...	Dowling's Practice Reports, 9 vols., 1830—1841 ...	Eng.
Dowl. N. S. ...	...	Dowling's Practice Reports, New Series, 2 vols., 1841—1843 ...	Eng.
Dr. & Wal. ...	...	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841 ...	Ir.
Dr. & War. ...	...	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843 ...	Ir.
Dra. ...	...	Draper's King's Bench Reports ...	Can.
Drew. ...	...	Drewry's Reports, Chancery, 4 vols., 1852—1859 ...	Eng.
Drew. & Sm. ...	...	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865 ...	Eng.
Drinkwater ...	...	Drinkwater's Reports, Common Pleas, 1 vol., 1840—1841 ...	Eng.
Drury temp. Nap. ...	...	Drury's Reports temp. Napier, Chancery (Ireland), 1 vol., 1858—1859 ...	Ir.
Drury temp. Sug. ...	...	Drury's Reports temp. Sugden, Chancery (Ireland), 1 vol., 1841—1844 ...	Ir.
Dugd. Orig. ...	...	Dugdale's Origines Juridicales ...	Eng.
Dunl. (Ct. of Sess.) ...	...	Dunlop, Court of Session Cases (Scotland), 2nd Series, 24 vols., 1838—1862 ...	Scot.
Dunning ...	...	Dunning's Reports, King's Bench, 1 vol., 1753—1754 ...	Eng.
Durie ...	...	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642 ...	Scot.
Dyer ...	...	Dyer's Reports, King's Bench, 3 vols., 1513—1581 ...	Eng.
E. & A. ...	...	Upper Canada Error and Appeal ...	Can.
E. & B. ...	...	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858 ...	Eng.
E. & E. ...	...	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861 ...	Eng.
E. B. & E. ...	...	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860 ...	Eng.
E. D. C. ...	...	Reports of the Eastern Districts Court (Cape) from 1880 ...	S. Af.
E. D. L. ...	...	South African Law Reports, Eastern Districts Local Division ...	S. Af.
E. L. R. ...	...	Eastern Law Reporter ...	Can.
E. R. (or Eng. Rep.) ...	...	English Reports ...	Eng.
E. R. ...	...	Ontario Election Reports ...	Can.
Eag. & Y.	Eagle and Younge's Tithe Cases, 4 vols., 1204—1825 ...	Eng.
East	East's Reports, King's Bench, 16 vols., 1800—1812 ...	Eng.

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East, P. O. ...	East's Pleas of the Crown ...	Eng.
Ecc. & Ad. ...	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855	Eng.
Eden ...	Eden's Reports, Chancery, 2 vols., 1757—1766 ...	Eng.
Edgar ...	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725	Scot.
Edw. ...	Edwards' Reports, Admiralty, 1 vol., 1808—1812 ...	Eng.
Elchies ...	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754 ...	Scot.
Emden's B. C. ...	Emden's Building Contracts, Building Leases and Building Statutes ...	Eng.
Eng. Pr. Cas. ...	Roscoe's English Prize Cases, 2 vols., 1745—1858 ...	Eng.
Eq. Cas. Abr. ...	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744 ...	Eng.
Eq. Rep. ...	Equity Reports, 3 vols., 1853—1855 ...	Eng.
Esp. ...	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810 ...	Eng.
Ex. D. ...	Law Reports, Exchequer Division, 5 vols., 1875—1880 ...	Eng.
Exch. ...	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856 ...	Eng.
Exch. C. R. ...	Exchequer Court Reports ...	Can.
F. (Ct. of Sess.) ...	Fraser, Court of Session Cases (Scotland), 5th series, 1898—1906	Scot.
F. ...	Foord's Reports of the Supreme Court of the Cape of Good Hope, 1879—1880 ...	S. Af.
F. & F. ...	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867	Eng.
F. N. D. ...	Finnemore's Notes and Digest of Natal Cases, 1863—1867 ...	S. Af.
Fac. Coll. ...	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols., 1752—1841 ...	Scot.
Falc. ...	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751 ...	Scot.
Falc. & Fitz. ...	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838 ...	Eng.
Fenton ...	Fenton, Important Judgments ...	N.Z.
Ferg. ...	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817	Scot.
Fitz. Nat. Brev. ...	Fitzherbert's Natura Brevium ...	Eng.
Fitz-G. ...	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1727—1731	Eng.
Fl. & K. ...	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842 ...	Ir.
Fonbl. ...	Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852 ...	Eng.
For. ...	Forrest's Reports, Exchequer, 1 vol., 1800—1801 ...	Eng.
Forb. ...	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713 ...	Scot.
Fort. De Laud. ...	Fortesque, De Laudibus Legum Angliæ ...	Eng.
Fortes. Rep. ...	Fortescue's Reports, fol., 1 vol., 1692—1736 ...	Eng.
Fost. ...	Foster's Crown Cases, 1 vol., 1708—1760 ...	Eng.
Fount. ...	Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712 ...	Scot.
Fox & S. Ir. ...	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825 ...	Ir.
Fox & S. Reg. ...	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895 ...	Eng.
Fras. ...	Fraser (Simon), Election Cases, 2 vols., 1793 ...	Eng.
Freem. Ch. ...	Freeman's Reports, Chancery, 1 vol., 1660—1706 ...	Eng.
Freem. K. B. ...	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704 ...	Eng.
G. ...	Gregorowski's Reports of the High Court of the Orange Free State from 1883 ...	S. Af.
G. & R. ...	Nova Scotia Reports (Geldert & Russell) ...	Can.
G. I. Dig. ...	General Index Digest ...	Can.
Gal. & Dav. ...	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843 ...	Eng.
Gale ...	Gale's Reports, Exchequer, 2 vols., 1835—1836 ...	Eng.
Gaz. L. R. ...	New Zealand Gazette Law Reports ...	N.Z.
Geld. Dig. ...	Geldert's Digest ...	Can.
Gib. Cod. ...	Gibson's Codex Juris Ecclesiastici Anglicani ...	Eng.
Giff. ...	Giffard's Reports, Chancery, 5 vols., 1857—1865 ...	Eng.
Gilb. ...	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714 ...	Eng.
Gilb. C. P. ...	Gilbert's History and Practice of the Court of Common Pleas	Eng.
Gilb. Ch. ...	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726 ...	Eng.
Gilm. & F. ...	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686 ...	Scot.
Gl. & J. ...	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828	Eng.
Glanv. ...	Glanville, De Legibus et Consuetudinibus Regni Angliæ ...	Eng.
Glanv. El. Cas. ...	Glanville's Election Cases, 1 vol., 1623—1624 ...	Eng.
GlascocK' ...	GlascocK's Reports (Ireland), 1 vol., 1831—1832 ...	Ir.
Godb. ...	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637 ...	Eng.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Gouldsb.	Gouldsbrough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601	Eng.
Gow	...	...	Gow's Reports, Nisi Prius, 1 vol., 1818—1820	...	...	Eng.
Gr.	...	...	Upper Canada Chancery (Grant)	...	...	Can.
Griffin's Patent Cases	...	...	Griffin's Patent Cases, 1884—1887	...	...	Eng.
Gwill.	...	...	Gwillim's Tithe Cases, 4 vols., 1224—1824	...	...	Eng.
H.	...	...	Hertzog's Reports of the High Court of the South African Republic, 1893	...	...	S. Af.
H. & O.	...	...	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866	...	...	Eng.
H. & N.	...	...	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—1862	...	...	Eng.
H. & Tw.	...	...	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850	...	...	Eng.
H. & W.	...	...	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841	...	...	Eng.
H. B. R. (preceded by date)	...	...	Hansell's Reports of Bankruptcy and Companies' Winding up Cases, 3 vols., 1915—1917 (e.g., [1915] H. B. R.)	...	...	Eng.
H. C.	...	...	Reports of the High Court of Griqualand West	...	...	S. Af.
H. E. O.	...	...	Hodgin's Election Reports	...	...	Can.
H. L. Cas.	...	...	Clark's Reports, House of Lords, 11 vols., 1847—1866	...	...	Eng.
Hag. Adm.	...	...	Haggard's Reports, Admiralty, 3 vols., 1822—1838	...	...	Eng.
Hag. Con.	...	...	Haggard's Consistorial Reports, 2 vols., 1789—1821	...	...	Eng.
Hag. Ecc.	...	...	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833	...	...	Eng.
Hailes	...	...	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791	...	...	Scot.
Hale, C. L.	...	...	Hale's Common Law	...	...	Eng.
Hale, P. O.	...	...	Hale's Pleas of the Crown, 2 vols.	...	...	Eng.
Han.	...	...	New Brunswick Reports (Hannay)	...	...	Can.
Har. & Ruth.	...	...	Harrison and Rutherford's Reports, Common Pleas, 1 vol., 1865—1866	...	...	Eng.
Har. & W.	...	...	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836	...	...	Eng.
Harc.	...	...	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691	...	...	Scot.
Hard.	...	...	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669	...	...	Eng.
Hare	...	...	Hare's Reports, Chancery, 11 vols., 1841—1853	...	...	Eng.
Hawk. P. O.	...	...	Hawkins's Pleas of the Crown, 2 vols.	...	...	Eng.
Hay	...	...	Hay's Reports	...	...	Ind.
Hay & Marr.	...	...	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779	...	...	Eng.
Hayes	...	...	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832	...	...	Ir.
Hayes & Jo.	...	...	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834	...	...	Ir.
Hem. & M.	...	...	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865	...	...	Eng.
Het.	...	...	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631	...	...	Eng.
Hob.	...	...	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625	...	...	Eng.
Hodg.	...	...	Hodges' Reports, Common Pleas, 3 vols., 1835—1837	...	...	Eng.
Hog.	...	...	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834	...	...	Ir.
Holt, Adm.	...	...	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867	...	...	Eng.
Holt, Eq.	...	...	W. Holt's Equity Reports, 2 vols., 1845	...	...	Eng.
Holt, K. B.	...	...	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710	...	...	Eng.
Holt, N. P.	...	...	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817	...	...	Eng.
Home, Ct. of Sess.	...	...	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744	...	...	Scot.
Hong Kong L. R.	...	...	Hong Kong Reports	...	...	Hong Kong.
Hop. & Colt.	...	...	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878	...	...	Eng.
Hop. & Ph.	...	...	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867	...	...	Eng.
Horn & H.	...	...	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839	...	...	Eng.
Hov. Supp.	...	...	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817	...	...	Eng.
How. O.	...	...	Howard's Chancery Practice	...	...	Ir.
How. O. S.	...	...	Howard's Supplement to Rules, etc., of the High Court of Chancery in Ireland	...	...	Ir.
How. E. E.	...	...	Howard's Equity Exchequer	...	...	Ir.
How. P. L.	...	...	Howard on the Popery Laws	...	...	Ir.
Hud. & B.	...	...	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831	...	...	Ir.
Hudson's B. O.	...	...	Hudson on Building Contracts, 2 vols.	...	...	Eng.
Hume	...	...	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822	...	...	Scot.
Hut.	...	...	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638	...	...	Eng.
Hy. Bl.	...	...	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796	...	...	Eng.
Hyde	...	...	Hyde's Reports	...	...	Ind.

I. C. L. R.	...	Irish Common Law Reports, 17 vols., 1849—1866	...	Ir.
I. Ch. R.	...	Irish Chancery Reports, 17 vols., 1850—1867	...	Ir.
I. Eq. R.	...	Irish Equity Reports, 13 vols., 1838—1851	...	Ir.
I. L. R.	...	Irish Law Reports, 13 vols., 1838—1851	...	Ir.
I. L. R. (Vol.) All.	...	Indian Law Reports, Allahabad	...	Ind.
I. L. R. (Vol.) Bom.	...	Indian Law Reports, Bombay	...	Ind.
I. L. R. (Vol.) Calc.	...	Indian Law Reports, Calcutta	...	Ind.
I. L. R. (Vol.) Lah.	...	Indian Law Reports, Lahore	...	Ind.
I. L. R. (Vol.) Mad.	...	Indian Law Reports, Madras	...	Ind.
I. L. T.	...	Irish Law Times, 1867—(current)	...	Ir.
I. L. T. Jo.	...	Irish Law Times Journal, 1867—(current)	...	Ir.
I. R. (preceded by date)	...	Irish Reports, since 1893 (<i>e.g.</i> [1894] 1 I. R.)	...	Ir.
I. R. (Vol.) O. L.	...	Irish Reports, Common Law, 11 vols., 1866—1877	...	Ir.
I. R. Eq.	...	Irish Reports, Equity, 11 vols., 1866—1877	...	Ir.
Ind. Awards	...	Industrial Awards Recommendations	...	N.Z.
Ind. Jur. N. S.	...	Indian Jurist, New Series	...	Ind.
Ind. Jur. O. S.	...	Indian Jurist, Old Series	...	Ind.
Ir. Cir. Rep.	...	Reports of Irish Circuit Cases, 1 vol., 1841—1843	...	Ir.
Ir. Jur.	...	Irish Jurist, 18 vols., 1849—1866	...	Ir.
Ir. L. Rec. 1st ser.	...	Law Recorder (Ireland), 1st series, 4 vols., 1827—1831	...	Ir.
Ir. L. Rec. N. S.	...	Law Recorder (Ireland), New Series, 6 vols., 1833—1838	...	Ir.
Irv.	...	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867	...	Scot.
J. Bridg.	...	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621	...	Eng.
J. D. R.	...	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division	...	S. Af.
J. P.	...	Justice of the Peace, 1837—(current)	...	Eng.
J. P. Jo.	...	Justice of the Peace (Weekly Notes of Cases)	...	Eng.
J. R.	...	Jurist Reports	...	N.Z.
J. R. N. S.	...	Jurist Reports, New Series	...	N.Z.
J. Shaw, Just.	...	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1818—1852	...	Scot.
Jac.	...	Jacob's Reports, Chancery, 1 vol., 1821—1823	...	Eng.
Jac. & W.	...	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821	...	Eng.
James	...	Nova Scotia Reports (James)	...	Can.
Jebb & B.	...	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol., 1841—1842	...	Ir.
Jebb & S.	...	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841	...	Ir.
Jebb, C. C.	...	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840	...	Ir.
Jebb, Cr. & Pr. Cas.	...	Jebb's Crown and Presentment Cases	...	Ir.
Jenk.	...	Jenkins' Reports, 1 vol., 1220—1623	...	Eng.
Jo. & Car.	...	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—1839	...	Ir.
Jo. & Lat.	...	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846	...	Ir.
Jo. Ex. Ir.	...	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838	...	Ir.
John.	...	Johnson's Reports, Chancery, 1 vol., 1858—1860	...	Eng.
John. & H.	...	Johnson and Hemming's Reports, Chancery, 2 vols., 1859—1862	...	Eng.
Jur.	...	Jurist Reports, 18 vols., 1837—1854	...	Eng.
Jur. N. S.	...	Jurist Reports, New Series, 12 vols., 1855—1867	...	Eng.
Just. Inst.	...	Justinian's Institutes	...	Eng.
K.	...	Kotze's Reports of the High Court of the Transvaal Province, 1877—1881	...	S. Af.
K. & G	...	Keane and Grant's Registration Cases, 1 vol., 1854—1862	...	Eng.
K. & J.	...	Kay and Johnson's Reports, Chancery, 4 vols., 1854—1858	...	Eng.
K. B. (preceded by date)	...	Law Reports, King's Bench Division, since 1900 (<i>e.g.</i> , [1901] 2 K. B.)	...	Eng.
Kames Dict. Dec.	...	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741	...	Scot.
Kames, Rem. Dec.	...	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752	...	Scot.
Kames, Sel. Dec.	...	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768	...	Scot.
Kay	...	Kay's Reports, Chancery, 1 vol., 1853—1854	...	Eng.
Keb.	...	Keble's Reports, fol., 3 vols., 1661—1677	...	Eng.
Keen	...	Keen's Reports, Rolls Court, 2 vols., 1836—1838	...	Eng.
Keil.	...	Keilway's Reports, King's Bench, fol., 1 vol., 1327—1578	...	Eng.
Kel.	...	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	...	Eng.
Kel. W.	...	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734	...	Eng.
Keny.	...	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759	...	Eng.
Keny. Ch.	...	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754	...	Eng.
Kerr	...	New Brunswick Reports (Kerr)	...	Can.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Kilkerran	...	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752 ...	
Kn. & Omb.	...	Knapp and Ombler's Election Cases, 1 vol., 1834—1835 ...	Scot.
Knapp	...	Knapp's Reports, Privy Council, 3 vols., 1829—1836 ...	Eng.
Knox	...	Knox's Reports ...	Eng.
Konst. & W. Rat. App.	...	Konstam and Ward's Reports of Rating Appeals, 1 vol., 1909—1912 ...	Aus.
Konst. Rat. App.	...	Konstam's Reports of Rating Appeals, 2 vols., 1894—1904 ...	Eng.
L. & G. temp. Plunk.	...	Lloyd and Goold's Reports temp. Plunkett, Chancery (Ireland), 1 vol., 1834—1839 ...	Eng.
L. & G. temp. Sugd.	...	Lloyd and Goold's Reports temp. Sugden, Chancery (Ireland), 1 vol., 1835 ...	Ir.
L. & Welsb.	...	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., 1829—1830 ...	Ir.
L. C. & M. Gaz.	...	Local Courts and Municipal Gazette ...	Eng.
L. C. J.	...	Lower Canada Jurist ...	Can.
L. C. L. J.	...	Lower Canada Law Journal ...	Can.
L. C. R.	...	Lower Canada Reports ...	Can.
L. G. R.	...	Local Government Reports, 1902—(current) ...	Eng.
L. J. Adm.	...	Law Journal, Admiralty, 1865—1875 ...	Eng.
L. J. Bcy.	...	Law Journal, Bankruptcy, 1832—1880 ...	Eng.
L. J. C. C.	...	Law Journal (County Courts Reporter), 1912—(current) ...	Eng.
L. J. C. P.	...	Law Journal, Common Pleas, 1831—1875 ...	Eng.
L. J. Ch.	...	Law Journal, Chancery, 1831—(current) ...	Eng.
L. J. Eccl.	...	Law Journal, Ecclesiastical Cases, 1866—1875 ...	Eng.
L. J. Ex.	...	Law Journal, Exchequer, 1831—1875 ...	Eng.
L. J. Ex. Eq.	...	Law Journal, Exchequer in Equity, 1835—1841 ...	Eng.
L. J. K. B. or Q. B.	...	Law Journal, King's Bench or Queen's Bench, 1831—(current) ...	Eng.
L. J. M. O.	...	Law Journal, Magistrates' Cases, 1831—1896 ...	Eng.
L. J. N. C.	...	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal) ...	Eng.
L. J. O. S.	...	Law Journal, Old Series, 10 vols., 1822—1831 ...	Eng.
L. J. P.	...	Law Journal, Probate Divorce and Admiralty, 1875—(current) ...	Eng.
L. J. P. & M.	...	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875 ...	Eng.
L. J. P. C.	...	Law Journal, Privy Council, 1865—(current) ...	Eng.
L. J. P. M. & A.	...	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865 ...	Eng.
L. Jo.	...	Law Journal Newspaper, 1866—(current) ...	Eng.
L. L. R.	...	Leader Law Reports ...	S. Af.
L. M. & P.	...	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851 ...	Eng.
L. N.	...	Legal News ...	Can.
L. R. A. & E.	...	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865—1875 ...	Eng.
L. R. O. C. R.	...	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875 ...	Eng.
L. R. C. P.	...	Law Reports, Common Pleas, 10 vols., 1865—1875 ...	Eng.
L. R. Eq.	...	Law Reports, Equity Cases, 20 vols., 1865—1875 ...	Eng.
L. R. Exch.	...	Law Reports, Exchequer, 10 vols., 1865—1875 ...	Eng.
L. R. H. L.	...	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875 ...	Eng.
L. R. Ind. App.	...	Law Reports, Indian Appeals, Privy Council, 1873—(current) ...	Eng.
L. R. Ind. App. Supp. Vol.	...	Law Reports, India Appeals, Privy Council, Supplementary Volume, 1872—1873 ...	Eng.
L. R. Ir.	...	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877—1893 ...	Ir.
L. R. P. & D.	...	Law Reports, Probate and Divorce, 3 vols., 1865—1875 ...	Eng.
L. R. P. C.	...	Law Reports, Privy Council, 6 vols., 1865—1875 ...	Eng.
L. R. Q. B.	...	Law Reports, Queen's Bench, 10 vols., 1865—1875 ...	Eng.
L. R. Q. B.	...	Quebec Reports, Queen's Bench ...	Can.
L. R. Sc. & Div.	...	Law Reports, Scotch and Divorce Appeals, House of Lords, 2 vols., 1866—1875 ...	Eng.
L. T.	...	Law Times Reports, 1859—(current) ...	Eng.
L. T. Jo.	...	Law Times Newspaper, 1843—(current) ...	Eng.
L. T. O. S.	...	Law Times Reports, Old Series, 34 vols., 1843—1860 ...	Eng.
L. Th.	...	La Themis ...	Can.
Lane	...	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611 ...	Eng.
Lat.	...	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628 ...	Eng.
Laws. Reg. Cas.	...	Lawson's Registration Cases, 1895—(current) ...	Eng.
Ld. Raym.	...	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732 ...	Eng.
Le. & Ca.	...	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865 ...	Eng.
Leach	...	Leach's Crown Cases, 2 vols., 1730—1814 ...	Eng.
Lee	...	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758 ...	Eng.
Lee temp. Hard.	...	T. Lee's Cases temp. Hardwicke, King's Bench, 1 vol., 1733—1738 ...	Eng.
Leg. Rep.	...	Legal Reporter ...	Ir.

Legge	Legge's Reports	Aus.
Leon.	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615	Eng.
Lev.	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696	Eng.
Lew. C. O.	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838	Eng.
Ley	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629	Eng.
Lib. Ass.	Liber Assisarum, Year Books, 1—51 Edw. III.	Eng.
Lilly	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.	Eng.
Litt.	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631	Eng.
Lloyd, L. R.	Lloyd's List Law Reports, 1919—(current)	Eng.
Lloyd, Pr. Cas.	Lloyd's Reports of Prize Cases, 5 vols., 1914—1918	Eng.
Lofft	Lofft's Reports, King's Bench, foll., 1 vol., 1772—1774	Eng.
Long. & T.	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol., 1841—1842	Ir.
Lords Journals	Journals of the House of Lords	Eng.
Lud. E. O.	Luder's Election Cases, 3 vols., 1784—1787	Eng.
Lumley, P. L. O.	Lumley's Poor Law Cases, 2 vols., 1834—1842	Eng.
Lush.	Lushington's Reports, Admiralty, 1 vol., 1859—1862	Eng.
Lut.	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704	Eng.
Lut. Reg. Cas.	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853	Eng.
Lynd.	Lyndwood, Provinciale, fol., 1 vol.	Eng.
M.	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	S. Af.
M. & S.	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817	Eng.
M. & W.	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847	Eng.
M. C. R.	Montreal Condensed Reports	Can.
M. H. C. R.	Madras High Court Reports	Ind.
M. L. R. (Vol.) K. B. or Q. B.	Montreal Law Reports, King's Bench or Queen's Bench	Can.
M. L. R. (Vol.) S. C.	Montreal Law Reports, Superior Court	Can.
M. M. Cas.	Martin's Reports of Mining Cases	Can.
Mac.	Macassey's New Zealand Reports	N.Z.
Mac. & G.	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852	Eng.
Mac. & H.	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852	Eng.
M'Cle.	M'Clelland's Reports, Exchequer, 1 vol., 1824	Eng.
M'Cle. & Yo.	M'Clelland and Younge's Reports, Exchequer, 1 vol., 1824—1825	Eng.
Macfarlane	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839	Scot.
Macl. & Rob.	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839	Scot.
Macph. (Ct. of Sess.)	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873	Scot.
Macq.	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865	Scot.
Macr.	Macrory's Patent Cases, 2 parts, 1847—1856	Eng.
Mad.	Madras High Court Reports	Ind.
Madd.	Maddock's Reports, Chancery, 6 vols., 1815—1821	Eng.
Madd. & G.	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)	Eng.
Madox	Madox's Formulæ Anglicanum	Eng.
Madox, Exch.	Madox's History and Antiquities of the Exchequer, 2 vols.	Eng.
Mag.	Magistrate and Municipal and Parochial Lawyer, London, 5 vols., 1848—1852	Eng.
Man. & G.	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845	Eng.
Man. & Ry. K. B.	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830	Eng.
Man. & Ry. M. O.	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830	Eng.
Man. L. J.	Manitoba Law Journal	Can.
Man. L. R.	Manitoba Law Reports	Can.
Man. R. temp. Wood	Manitoba Reports temp. Wood	Can.
Mans.	Manson's Bankruptcy and Company Cases, 21 vols., 1893—1914	Eng.
Mar. L. O.	Maritime Law Reports (Crockford), 8 vols., 1860—1871	Eng.
March	March's Reports, King's Bench and Common Pleas, 1 vol., 1639—1642	Eng.
Marr.	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779	Eng.
Marsh.	Marshall's Reports, Common Pleas, 2 vols., 1813—1816	Eng.
Marsh.	Marshall's Reports	Ind.
Mayn.	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1326	Eng.
Meg.	Megone's Companies Acts Cases, 2 vols., 1889—1891	Eng.
Men.	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	S. Af.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Mer.	Merivale's Reports, Chancery, 3 vols., 1815—1817	...	Eng.
Milw.	Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843	...	Ir.
Mod. Rep. ...	...	Modern Reports, 12 vols., 1669—1755	...	Eng.
Mol. ...	...	Molloy's Reports, Chancery (Ireland), 3 vols., 1808—1831	...	Ir.
Mont. ...	...	Montagu's Reports, Bankruptcy, 1 vol., 1829—1832	...	Eng.
Mont. & A. ...	...	Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838	...	Eng.
Mont. & B. ...	...	Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833	...	Eng.
Mont. & Ch. ...	...	Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1840	...	Eng.
Mont. & M. ...	...	Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1826—1830	...	Eng.
Mont. D. & De G. ...	...	Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844	...	Eng.
Moo. & P. ...	...	Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831	...	Eng.
Moo. & S. ...	...	Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834	...	Eng.
Moo. Ind. App. ...	...	Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872	...	Eng.
Moo. P. O. C. ...	...	Moore's Privy Council Cases, 15 vols., 1836—1863	...	Eng.
Moo. P. O. C. N. S. ...	...	Moore's Privy Council Cases, New Series, 9 vols., 1862—1873	...	Eng.
Mood. & M. ...	...	Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826—1830	...	Eng.
Mood. & R. ...	...	Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844	...	Eng.
Mood. C. O. ...	...	Moody's Crown Cases Reserved, 2 vols., 1824—1844	...	Eng.
Moore, C. P. ...	...	J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827	...	Eng.
Moore, K. B. ...	...	Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620	...	Eng.
Mor. Dict. ...	...	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808	...	Scot.
Morr. ...	...	Morrell's Reports, Bankruptcy, 10 vols., 1884—1893	...	Eng.
Mos. ...	...	Moseley's Reports, Chancery, fol., 1 vol., 1726—1730	...	Eng.
Mun. Rep. ...	...	Municipal Reports	...	Can.
Murd. Epit. ...	...	Murdoch's Epitome	...	Can.
Murp. & H. ...	...	Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837	...	Eng.
Murr. ...	...	Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830	...	Scot.
My. & Cr. ...	...	Myne and Craig's Reports, Chancery, 5 vols., 1835—1841	...	Eng.
My. & K. ...	...	Myne and Keen's Reports, Chancery, 3 vols., 1832—1835	...	Eng.
N. A. C. ...	...	Native Appeal Cases	...	S. Af.
N. & S. ...	...	Nichols and Stop's Reports (Tasmania)	...	Tasmania.
N. B. Dig. ...	...	New Brunswick Digest (Stevens)	...	Can.
N. B. Eq. Rep. ...	...	New Brunswick Equity Reports	...	Can.
N. B. R. ...	...	New Brunswick Reports	...	Can.
N. B. R. (All.) ...	...	New Brunswick Reports (Allen)	...	Can.
N. B. R. (Ber.) ...	...	New Brunswick Reports (Berton)	...	Can.
N. B. R. (Carl.) ...	...	New Brunswick Reports (Carlton)	...	Can.
N. B. R. (Chip.) ...	...	New Brunswick Reports (Chipman)	...	Can.
N. B. R. (Han.) ...	...	New Brunswick Reports (Hannay)	...	Can.
N. B. R. (Kerr) ...	...	New Brunswick Reports (Kerr)	...	Can.
N. B. R. (P. & B.) ...	...	New Brunswick Reports (Pugsley and Burbidge)	...	Can.
N. B. R. (P. & T.) ...	...	New Brunswick Reports (Pugsley and Trueman)	...	Can.
N. B. R. (Pug.) ...	...	New Brunswick Reports (Pugsley)	...	Can.
N. B. R. (Tru.) ...	...	New Brunswick Reports (Trueman)	...	Can.
N. L. R. ...	...	Natal Law Reports	...	S. Af.
N. S. R. ...	...	Nova Scotia Reports	...	Can.
N. S. R. (Coch.) ...	...	Nova Scotia Reports (Cochran)	...	Can.
N. S. R. (G. & R.) ...	...	Nova Scotia Reports (Geldert & Russell)	...	Can.
N. S. R. (James) ...	...	Nova Scotia Reports (James)	...	Can.
N. S. R. (Old.) ...	...	Nova Scotia Reports (Oldrights)	...	Can.
N. S. R. (R. & C.) ...	...	Nova Scotia Reports (Russell and Chesley)	...	Can.
N. S. R. (R. & G.) ...	...	Nova Scotia Reports (Russell and Geldert)	...	Can.
N. S. R. (Thom.) ...	...	Nova Scotia Reports (Thomson)	...	Can.
N. S. W. Adm. or Ad. ...	...	New South Wales Reports, Admiralty	...	Aus.
N. S. W. B. ...	...	New South Wales Reports, Bankruptcy	...	Aus.
N. S. W. Bkpty. Cas. ...	...	New South Wales Bankruptcy Cases	...	Aus.
N. S. W. Eq. ...	...	New South Wales Reports, Equity	...	Aus.
N. S. W. Ind. Arbtrn. Cas. ...	...	New South Wales Industrial Arbitration Cases	...	Aus.
N. S. W. L. R. ...	...	New South Wales Law Reports	...	Aus.
N. S. W. Land App. Cts. ...	...	New South Wales Land Appeal Courts	...	Aus.
N. S. W. S. O. R. ...	...	New South Wales Supreme Court Reports	...	Aus.
N. S. W. S. O. R. N. S. ...	...	New South Wales Supreme Court Reports, New Series	...	Aus.
N. S. W. W. N. ...	...	New South Wales Weekly Notes	...	Aus.
N. W. ...	...	North-Western Provinces High Court Reports	...	Ind.
N. W. T. R. ...	...	North-West Territories Reports	...	Can.
N. Z. Jur. ...	...	New Zealand Jurist	...	N.Z.
N. Z. Jur. Mining Law ...	...	New Zealand Jurist Mining Law	...	N.Z.
N. Z. Jur. N. S. ...	...	New Zealand Jurist, New Series	...	N.Z.
N. Z. L. R. ...	...	New Zealand Law Reports, 1883—(current)	...	N.Z.
N. Z. L. R. O. A. ...	...	New Zealand Law Reports, Court of Appeal, 5 vols., 1883—1887	...	N.Z.
Nels. ...	...	Nelson's Reports, Chancery, 1 vol., 1625—1693	...	Eng.

Nev. & M. K. B.	...	Neville and Manning's Reports, King's Bench, 6 vols., 1832—1836 ...	Eng.
Nev. & M. M. O.	...	Neville and Manning's Magistrates' Cases, 3 vols., 1832—1836 ...	Eng.
Nev. & P. K. B.	...	Neville and Perry's Reports, King's Bench, 3 vols., 1836—1838 ...	Eng.
Nev. & P. M. O.	...	Neville and Perry's Magistrates' Cases, 1 vol., 1836—1837 ...	Eng.
New Mag. Cas.	...	New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols., 1844—1850 ...	Eng.
New Pract. Cas.	...	New Practice Cases (Bittleston and others), 3 vols., 1844—1848 ...	Eng.
New Rep.	...	New Reports, 6 vols., 1862—1865 ...	Eng.
New Sess. Cas.	...	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851 ...	Eng.
Nfld. L. R.	...	Newfoundland Reports ...	Nfld.
Nolan	...	Nolan's Magistrates' Cases, 1 vol., 1791—1793 ...	Eng.
Notes of Cases	...	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850 ...	Eng.
Noy	...	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649 ...	Eng.
O. B. & F.	...	Ollivier Bell and Fitzgerald's Reports ...	N.Z.
O. B. S. P.	...	Old Bailey Session Papers ...	Eng.
O. Bridg.	...	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666 ...	Eng.
O. F. S.	...	Reports of the High Court of the Orange Free State, 1879—1883 ...	S. Af.
O. L. R.	...	Ontario Law Reports ...	Can.
O'M. & H.	...	O'Malley and Hardcastle's Election Cases, 1869—(current) ...	Eng.
O. P. D.	...	South African Law Reports, Orange Free State Provincial Division ...	S. Af.
O. R.	...	Ontario Reports ...	Can.
O. R.	...	Official Reports of the South African Republic, 1894—1899 ...	S. Af.
O. R. C.	...	Reports of the High Court of the Orange River Colony ...	S. Af.
O. S.	...	Upper Canada Queen's Bench, Old Series ...	Can.
O. W. N.	...	Ontario Weekly Notes ...	Can.
O. W. R.	...	Ontario Weekly Reporter ...	Can.
Old.	...	Nova Scotia Reports (Oldrights) ...	Can.
Ont. Dig.	...	Digest of Ontario Case Law, 4 vols., 1823—1900 ...	Can.
Owen	...	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614 ...	Eng.
P. (preceded by date)	...	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 (e.g., [1891] P.) ...	Eng.
P. & B.	...	New Brunswick Reports (Pugsley and Burbidge) ...	Can.
P. & T.	...	New Brunswick Law Reports (Pugsley and Trueman) ...	Can.
P. D.	...	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890 ...	Eng.
P. E. I.	...	Prince Edward Island Reports ...	Can.
P. R.	...	Ontario Practice ...	Can.
P. Wms.	...	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735 ...	Eng.
Palm.	...	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629 ...	Eng.
Park.	...	Parker's Reports, Exchequer, fol., 1 vol., 1743—1767; App. 1678—1717 ...	Eng.
Pat. App.	...	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822 ...	Scot.
Pater. App.	...	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873 ...	Scot.
Peake	...	Peake's Reports, Nisi Prius, 1 vol., 1790—1794 ...	Eng.
Peake, Add. Cas.	...	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812 ...	Eng.
Peck.	...	Peckwell's Election Cases, 2 vols., 1803—1806 ...	Eng.
Pelham	...	Pelham (S. A.) Reports ...	Aus.
Per. & Dav.	...	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841 ...	Eng.
Per. & Kn.	...	Perry and Knapp's Election Cases, 1 vol., 1833 ...	Eng.
Per. O. S.	...	Perrault's Conseil Supérieur ...	Can.
Per. P.	...	Perrault's Prévosté de Quebec, 1726—1756 ...	Can.
Ph.	...	Phillips' Reports, Chancery, 2 vols., 1841—1849 ...	Eng.
Phil. El. Cas.	...	Phillips' Election Cases, 1 vol., 1780 ...	Eng.
Phillim.	...	J. Phillimore's Ecclesiastical Reports, 3 vols., 1809—1821 ...	Eng.
Phillim. Eccl. Jud.	...	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875 ...	Eng.
Phip.	...	Phipson's Digest of Natal Reports, 1858—1859 ...	S. Af.
Pig. & R.	...	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845 ...	Eng.
Pitc.	...	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624 ...	Scot.
Plowd.	...	Plowden's Reports, fol., 2 vols., 1550—1580, and Plowden's Queries, Vol. I. ...	Eng.
Poll.	...	Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682 ...	Eng.
Poph.	...	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627 ...	Eng.
Pow. R. & D.	...	Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856 ...	Eng.
Prec. Ch.	...	Precedents in Chancery, fol., 1 vol., 1689—1722 ...	Eng.
Price	...	Price's Reports, Exchequer, 13 vols., 1814—1824 ...	Eng.
Price	...	Price's Mining Commissioners' Cases ...	Can.
Pug.	...	New Brunswick Reports (Pugsley) ...	Can.
Py. R.	...	Pykes' Lower Canada Reports ...	Can.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Q. B.	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852	Eng.
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891—1901 (<i>e.g.</i> , [1891] 1 Q. B.)	Eng.
Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875—1890	Eng.
Q. J. P.	Queensland Justice of Peace Reports	Aus.
Q. L. J.	Queensland Law Journal	Aus.
Q. L. R.	Quebec Law Reports	Can.
Q. L. R. (Beor)	Queensland Law Reports by Beor	Aus.
Q. P. R.	Quebec Practice Reports	Can.
Q. R. (Vol.) K. B. or Q. B.	Rapports Judiciaires de Québec, Cour du Banc du Roi, 1892—(current)	Can.
Q. R. (Vol.) S. O.	Rapports Judiciaires de Québec, Cour Supérieure, 1892—(current)	Can.
Q. S. O. R.	Queensland Supreme Court Reports	Aus.
Q. S. R.	Queensland State Reports	Aus.
Q. W. N.	Weekly Notes, Queensland	Aus.
R.	The Reports, 15 vols., 1893—1895	Eng.
R.	Roscoe's Reports of the Supreme Court of the Cape of Good Hope 1861—1867, 1871—1872, 1877—1878	S. Af.
R. (Ct. of Sess.)	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898	Scot.
R. A. C.	Ramsay, Appeal Cases	Can.
R. & C.	Nova Scotia Reports (Russell & Chesley)	Can.
R. & G.	Nova Scotia Reports (Russell and Geldert)	Can.
R. C.	La Revue Critique de Législation et de Jurisprudence de Canada	Can.
R. de J.	Revue de Jurisprudence	Can.
R. de L.	Revue de Législation et de Jurisprudence, 3 vols., 1845—1848	Can.
R. E. D.	New South Wales, Reserved and Equity Decisions	Aus.
R. E. D.	Ritchie's Equity Decisions (Russell)	Can.
R. J. R. Q.	Quebec Revised Reports	Can.
R. L. N. S.	Revue Légale, New Series, 1895—(current)	Can.
R. L. O. S.	Revue Légale, Old Series, 21 vols., 1869—1892	Can.
R. P. C.	Reports of Patent Cases, 1884—(current)	Eng.
R. R.	Revised Reports	Eng.
Rast.	Rastell's Entries	Eng.
Rayn.	Rayner's Tithe Cases, 3 vols., 1575—1782	Eng.
Real Prop. Cas.	Real Property Cases, 2 vols., 1843—1847	Eng.
Rep. Ch.	Reports in Chancery, fol., 3 vols., 1615—1710	N.Z.
Rep. in C. of A.	Reports in Courts of Appeal	Aus.
Res. & Eq. Jud.	New South Wales Reserved and Equity Judgments	Ir.
Reserv. Cas.	Reserved Cases	Eng.
Rick. & M.	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889	Eng.
Rick. & S.	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894	Eng.
Ridg. L. & S.	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1795	Ir.
Ridg. Parl. Rep.	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796	Ir.
Ridg. temp. H.	Ridgeway's Reports temp. Hardwicke, 1 vol., King's Bench, 1793—1796; Chancery, 1744—1746	Eng.
Ritch. Eq. Rep.	Ritchie's Equity Reports	Can.
Rob. Eccl.	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853	Eng.
Rob. L. & W.	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851	Eng.
Robert. App.	Robertson's Scotch Appeals, House of Lords, 1 vol., 1709—1727	Scot.
Robin. App.	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	Scot.
Roll. Abr.	Rolle's Abridgment of the Common Law, fol., 2 vols.	Eng.
Roll. Rep.	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625	Eng.
Rom.	Romilly's Notes of Cases in Equity, 1 part, 1772—1787	Eng.
Roscoe's B.C.	Roscoe, Digest of Building Cases	Eng.
Rose	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	Eng.
Ross, L. C.	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.	Eng.
Rowe	Rowe's Reports (England and Ireland), 1 vol., 1798—1823	Eng.
Rul. Cas.	Campbell's Ruling Cases, 25 vols.	Eng.
Russ.	Russell's Reports, Chancery, 5 vols., 1824—1829	Eng.
Russ. & M.	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833	Eng.
Russ. & Ry.	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	Eng.
Russ. E. R.	Russell's Election Reports	Can.
Ry. & Can. Cas.	Railway and Canal Cases, 7 vols., 1835—1854	Eng.
Ry. & Can. Tr. Cas.	Railway and Canal Traffic Cases, 1855—(current)	Eng.
Ry. & M.	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826	Eng.
Ryde & K. Rat. App.	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—1904	Eng.
Ryde, Rat. App.	Ryde's Rating Appeals, 3 vols., 1871—1893	Eng.

xxviii REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

S.	...	...	Searle's Reports of the Supreme Court of the Cape of Good Hope	...	...	...	...	...	S. Af.
S. A. L. J.	...	...	South African Law Journal	...	...	...	...	...	S. Af.
S. A. L. R.	...	...	South Australian Law Reports	...	...	...	...	...	Aus.
S. A. L. R.	...	...	South African Law Reports	...	...	...	...	...	S. Af.
S. A. R.	...	...	Reports of the High Court of the South African Republic, 1881—1892	...	...	...	...	...	S. Af.
S. C.	...	...	Reports of the Supreme Court of the Cape of Good Hope from 1880	...	...	...	...	...	S. Af.
S. C. (preceded by date)	...	...	Court of Session Cases (Scotland), since 1906 (<i>e.g.</i> , [1906] S. C.)	...	...	...	...	...	Scot.
S. C. (H. L.) (preceded by date).	...	...	Court of Session Cases (Scotland) (House of Lords), since 1906 (<i>e.g.</i> , [1906] S. C. (H. L.))	...	...	...	...	...	Scot.
S. C. (J.) (preceded by date).	...	...	Court of Justiciary Cases (Scotland), since 1906 (<i>e.g.</i> , [1906] S. C. (J.))	...	...	...	...	...	Scot.
S. C. R.	...	...	Canada, Supreme Court Reports	...	...	...	...	...	Can.
S. L. T.	...	...	Scots Law Times, 1893 (current)	...	...	...	...	...	Scot.
S. Q. R.	...	...	Queensland State Reports	...	...	...	...	...	Aus.
S. R.	...	...	Reports of the High Court of Southern Rhodesia	...	...	...	...	...	S. Af.
S. R. C.	...	...	Stuart's Lower Canada Reports	...	...	...	...	...	Can.
S. R. N. S. W.	...	...	New South Wales, State Reports	...	...	...	...	...	Aus.
S. R. Q.	...	...	Queensland Reports, Supreme Court	...	...	...	...	...	Aus.
S. V. A. R.	...	...	Stuart's Vice-Admiralty Reports	...	...	...	...	...	Can.
Saint	...	...	Saint's Digest of Registration Cases, 1843—1906, 1 vol.	...	...	...	...	...	Eng.
Salk.	...	...	Salkeld's Reports, King's Bench, 3 vols., 1689—1712	...	...	...	...	...	Eng.
Sask. L. R.	...	...	Saskatchewan Law Reports	...	...	...	...	...	Can.
Sau. & Sc.	...	...	Sausee and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840	...	...	...	...	...	Ir.
Saund.	...	...	Saunders's Reports, King's Bench, 2 vols., 1666—1672	...	...	...	...	...	Eng.
Saund. & A.	...	...	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904	...	...	...	...	...	Eng.
Saund. & B.	...	...	Saunders and Bidder's Locus Standi Reports, 1905—(current)	...	...	...	...	...	Eng.
Saund. & C.	...	...	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848	...	...	...	...	...	Eng.
Saund. & M.	...	...	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858	...	...	...	...	...	Eng.
Sav.	...	...	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591	...	...	...	...	...	Eng.
Say	...	...	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756	...	...	...	...	...	Eng.
Sc. Jur.	...	...	Scottish Jurist, 46 vols., 1829—1873	...	...	...	...	...	Scot.
Sc. L. R.	...	...	Scottish Law Reporter, 1865—(current)	...	...	...	...	...	Scot.
Sc. R. R.	...	...	Scots Revised Reports	...	...	...	...	...	Scot.
Sch. & Lef.	...	...	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806	...	...	...	...	...	Ir.
Scott	...	...	Scott's Reports, Common Pleas, 8 vols., 1834—1840	...	...	...	...	...	Eng.
Scott, N. R.	...	...	Scott's New Reports, Common Pleas, 8 vols., 1840—1845	...	...	...	...	...	Eng.
Sea. & Sm.	...	...	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860	...	...	...	...	...	Eng.
Sel. Cas. Ch.	...	...	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.)	...	...	...	...	...	Eng.
Selwyn's N.P.	...	...	Selwyn's Abridgement of the Law of Nisi Prius	...	...	...	...	...	Eng.
Sess. Cas. K. B.	...	...	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747	...	...	...	...	...	Eng.
Sett. & Rem.	...	...	Cases adjudged in K. B. concerning Settlements & Removals, 1 vol., 1710—1742	...	...	...	...	...	Eng.
Sh. (Ct. of Sess.)	...	...	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838	...	...	...	...	...	Scot.
Sh. & Macl.	...	...	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838	...	...	...	...	...	Scot.
Sh. Dig.	...	...	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868	...	...	...	...	...	Scot.
Sh. Just.	...	...	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831	...	...	...	...	...	Scot.
Sh. Sc. App.	...	...	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824	...	...	...	...	...	Scot.
Sh. Teind Ct.	...	...	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831	...	...	...	...	...	Scot.
Shep. Touch.	...	...	Sheppard's Touchstone of Common Assurances	...	...	...	...	...	Eng.
Show.	...	...	Shower's Reports, King's Bench, 2 vols., 1678—1695	...	...	...	...	...	Eng.
Show. Parl. Cas.	...	...	Shower's Cases in Parliament, fol., 1 vol., 1694—1699	...	...	...	...	...	Eng.
Sid.	...	...	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670	...	...	...	...	...	Eng.
Sim.	...	...	Simons' Reports, Chancery, 17 vols., 1826—1852	...	...	...	...	...	Eng.
Sim. & St.	...	...	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826	...	...	...	...	...	Eng.
Sim. N. S.	...	...	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852	...	...	...	...	...	Eng.
Skin.	...	...	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697	...	...	...	...	...	Eng.
Sm. & Bat.	...	...	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825	...	...	...	...	...	Ir.
Sm. & G.	...	...	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857	...	...	...	...	...	Eng.
Smith, K. B.	...	...	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806	...	...	...	...	...	Eng.
Smith, L. O.	...	...	Smith's Leading Cases, 2 vols.	...	...	...	...	...	Eng.
Smith, Reg. Cas.	...	...	O. L. Smith's Registration Cases, 1895—(current)	...	...	...	...	...	Eng.
Smythe	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840	Ir.

REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS.

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Sol. Jo.	Solicitors' Journal, 1856—(current) ...	Eng.
Spence	Spence's Equitable Jurisdiction of the Court of Chancery ...	Eng.
Spinks ...	...	Spinks' Prize Court Cases, 2 parts, 1854—1856 ...	Eng.
St. R. Qd. (preceded by date) ...	...	Queensland State Reports, since 1902 (<i>e.g.</i> , [1902] St. R. Qd.) ...	Aus.
Stair Rep. ...	...	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681 ...	Scot.
Stark. ...	...	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823 ...	Eng.
State Tr. ...	...	State Trials, 34 vols., 1163—1820 ...	Eng.
State Tr. N. S. ...	...	State Trials, New Series, 8 vols., 1820—1858 ...	Eng.
Stewart ...	...	Stewart's Nova Scotia Admiralty Reports, 1803—1813 ...	Can.
Stockton ...	...	Stockton's Vice-Admiralty Report and Digest ...	Can.
Story ...	...	Story's Commentaries on Equity Jurisprudence ...	Eng.
Stra. ...	...	Strange's Reports, 2 vols., 1716—1747 ...	Eng.
Stu. M. & P. ...	...	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853 ...	Scot.
Stuart ...	...	Sessions Cases (Stuart) ...	Scot.
Stuart, Adm. ...	...	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856 ...	Can.
Stuart, Adm. N. S. ...	...	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859—1874 ...	Can.
Stuart, K. B. ...	...	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada), 1810—1835 ...	Can.
Sty. ...	...	Style's Reports, King's Bench, fol., 1 vol., 1646—1655 ...	Eng.
Sw. ...	...	Swabey's Reports, Admiralty, 1 vol., 1855—1859 ...	Eng.
Sw. & Tr. ...	...	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865 ...	Eng.
Swan. ...	...	Swanston's Reports, Chancery, 3 vols., 1818—1821 ...	Eng.
Swin. ...	...	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841 ...	Scot.
Syme ...	...	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829 ...	Scot.
T. & M. ...	...	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851 ...	Eng.
T. H. ...	...	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909 ...	S. Af.
T. Jo. ...	...	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685 ...	Eng.
T. L. ...	...	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current) ...	S. Af.
T. L. R. ...	...	The Times Law Reports, 1884—(current) ...	Eng.
T. P. ...	...	Reports of the Supreme Court of the Transvaal, 1910—(current)	S. Af.
T. P. D. ...	...	South African Law reports, Transvaal Provincial Division ...	S. Af.
T. Raym. ...	...	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683 ...	Eng.
T. S. ...	...	Reports of the Supreme Court of the Transvaal, 1902—1909 ...	S. Af.
Taml. ...	...	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830 ...	Eng.
Tas. L. R. ...	...	Tasmanian Law Reports ...	Aus.
Taunt. ...	...	Taunton's Reports, Common Pleas, 8 vols., 1807—1819 ...	Eng.
Tax Cas. ...	...	Tax Cases, 1875—(current) ...	Eng.
Tay. ...	...	Taylor's King's Bench Reports ...	Can.
Temp. Wood ...	...	Manitoba Reports <i>temp.</i> Wood ...	Can.
Term Rep. ...	...	Term Reports (Durnford and East), fol., 8 vols., 1785—1800 ...	Eng.
Terr. L. R. ...	...	Territories Law Reports ...	Can.
Thom. ...	...	Nova Scotia Reports (Thomson) ...	Can.
Toth. ...	...	Tothill's Transactions in Chancery, 1 vol., 1559—1646 ...	Eng.
Town. St. Tr. ...	...	Townsend, Modern State Trials ...	Eng.
Trem. P. O. ...	...	Tremaine Pleas of the Crown, 1 vol., 1667 ...	Eng.
Trist. ...	...	Tristram's Consistory Judgments, 1 vol., 1872—1890 ...	Eng.
Tru. ...	...	New Brunswick Reports (Trueman) ...	Can.
Tudor, L. O. Merc. Law. ...	...	Tudor's Leading Cases on Mercantile and Maritime Law ...	Eng.
Tudor, L. O. Real. Prop. ...	...	Tudor's Leading Cases on Real Property ...	Eng.
Turn. & R. ...	...	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825 ...	Eng.
Tyr. ...	...	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835 ...	Eng.
Tyr. & Gr. ...	...	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836 ...	Eng.
U. C. Jur. ...	...	Upper Canada Jurist ...	Can.
U. O. L. J. N. S. ...	...	Canada Law Journal, New Series, 1865—(current) ...	Can.
U. O. L. J. O. S. ...	...	Canada Law Journal, Old Series, 10 vols., 1855—1864 ...	Can.
U. O. R. ...	...	Upper Canada Reports, Queen's Bench ...	Can.
Udal ...	...	Fiji Law Reports (Udal) ...	Fiji.
V. L. R. ...	...	Victorian Law Reports ...	Aus.
V. R. ...	...	Victorian Reports ...	Aus.
V. R. (Adm.) ...	...	Victorian Reports (Admiralty) ...	Aus.
V. R. (Eq.) ...	...	Victorian Reports (Equity) ...	Aus.
V. R. (Law) ...	...	Victorian Reports (Law) ...	Aus.
Vaugh. ...	...	Vaughan's Reports, Common Pleas, fol., 1 vol., 1669—1673 ...	Eng.

Vent. ...	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691 ...	Eng.
Vern. ...	Vernon's Reports, Chancery, 2 vols., 1680—1719 ...	Eng.
Vern. & Scr. ...	Vernon and Sciven's Reports, King's Bench (Ireland), 1 vol., 1786—1788 ...	Ir.
Ves. ...	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817 ...	Eng.
Ves. & B. ...	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814 ...	Eng.
Ves. Sen. ...	Vesey Sen.'s Reports, 2 vols., 1747—1756 ...	Eng.
Vin. Abr. ...	Viner's Abridgment of Law and Equity, fol., 22 vols. ...	Eng.
Vin. Supp. ...	Supplement to Viner's Abridgment of Law and Equity, 6 vols. ...	Eng.
W. ...	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857 ...	S. Af.
W. A. L. R. ...	West Australian Law Reports ...	Aus.
W. A'B. & W. ...	Webb, A'Beckett and Williams' Victorian Reports ...	Aus.
W. & W. ...	Wyatt and Webb ...	Aus.
W. C. C. ...	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., 1898—1907 ...	Eng.
W. H. O. ...	South African Law Reports, Witwatersrand High Court ...	S. Af.
W. Jo. ...	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640 ...	Eng.
W. L. D. ...	South African Law Reports, Witwatersrand Local Division ...	S. Af.
W. L. R. ...	Western Law Reporter ...	Can.
W. L. T. ...	Western Law Times ...	Can.
W. N. (preceded by date)	Law Reports, Weekly notes, 1866—(current) (<i>e.g.</i> , [1866] W. N.)	Eng.
W. N. ...	Calcutta Weekly Notes ...	Ind.
W. R. ...	Weekly Reporter, 54 vols., 1852—1906 ...	Eng.
W. R. ...	Sutherland's Weekly Reporter ...	Ind.
W. R. ...	Weekly Reporter, reporting cases in the Cape Provincial Division ...	S. Af.
W. W. & A'B. ...	Wyatt, Webb and A'Beckett ...	Aus.
W. W. R. ...	Western Weekly Reports ...	Can.
Wallis ...	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791 ...	Ir.
Web. Pat. Cas. ...	Webster's Patent Cases, 2 vols., 1602—1855 ...	Eng.
Welsh, Reg. Cas. ...	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840 ...	Ir.
Went. Off. Ex. ...	Wentworth's Office and Duty of Executors ...	Eng.
West ...	West's Reports, House of Lords, 1 vol., 1839—1841 ...	Eng.
West temp. Hard. ...	West's Reports temp. Hardwicke, Chancery, 1 vol., 1736—1740 ...	Eng.
West. Tithe Cas. ...	Western's London Tithe Cases, 1 vol., 1592—1822 ...	Eng.
White ...	White's Justiciary Reports (Scotland), 3 vols., 1886—1893 ...	Scot.
White & Tud. L. C. ...	White and Tudor's Leading Cases in Equity, 2 vols. ...	Eng.
Wight. ...	Wightwick's Reports, Exchequer, 1 vol., 1810—1811 ...	Eng.
Will. Woll. & Dav. ...	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837 ...	Eng.
Will. Woll. & H. ...	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839 ...	Eng.
Willes ...	Willes' Reports, Common Pleas, 1 vol., 173 1758 ...	Eng.
Wilm. ...	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770 ...	Eng.
Wils. ...	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774 ...	Eng.
Wils & S. ...	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835 ...	Scot.
Wils. Ch. ...	J. Wilson's Reports, Chancery, 2 vols., 1818—1819 ...	Eng.
Wils. Ex. ...	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817 ...	Eng.
Win. ...	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625 ...	Eng.
Wm. Bl. ...	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779 ...	Eng.
Wm. Rob. ...	William Robinson's Reports, Admiralty, 3 vols., 1838—1850 ...	Eng.
Wms. Saund. ...	Williams' Notes to Saunders' Reports, 2 vols. ...	Eng.
Wolf. & B. ...	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864 ...	Eng.
Wolf. & D. ...	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858 ...	Eng.
Woll. ...	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841 ...	Eng.
Wood ...	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798 ...	Eng.
Y. A. D. ...	Young's Vice-Admiralty Reports ...	Can.
Y. & C. Ch. Cas. ...	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841—1848 ...	Eng.
Y. & C. Ex. ...	Younge and Collyer's Reports, Exchequer in Equity, 4 vols., 1833—1841 ...	Eng.
Y. & J. ...	Younge and Jervis' Reports, Exchequer, 3 vols., 1826—1830 ...	Eng.
Y. B. ...	Year Books ...	Eng.
Yelv. ...	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613 ...	Eng.
You. ...	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832 ...	Eng.

ABBREVIATIONS

USED IN THIS WORK.

(For Abbreviations used in citing Reports, see pp. xv.—xxx., *ante*.)

A.-G.	.	.	.	.	for Attorney-General.
Act.	.	.	.	.	„ Actiengesellschaft.
Admlty.	.	.	.	.	„ Admiralty.
Afd.	.	.	.	.	„ Affirmed.
Affg.	.	.	.	.	„ Affirming.
Akt.	.	.	.	.	„ Aktiengesellschaft ; Aktiebolaget ; Aktieselskabet.
Anon.	.	.	.	.	„ Anonymous.
Apld.	.	.	.	.	„ Applied.
Appot.	.	.	.	.	„ Applicant.
Appln.	.	.	.	.	„ Application.
Appln.	.	.	.	.	„ Application to Register a Trade Mark.
Applt.	.	.	.	.	„ Appellant.
Apprvd.	.	.	.	.	„ Approved
Arbn.	.	.	.	.	„ Arbitration.
Archbp.	.	.	.	.	„ Archbishop.
Art.	.	.	.	.	„ Article.
Assce.	.	.	.	.	„ Assurance.
Assocn.	.	.	.	.	„ Association.
B. C.	.	.	.	.	„ Borough Council.
Bkpcy.	.	.	.	.	„ Bankruptcy.
Bkpt.	.	.	.	.	„ Bankrupt.
Bldg. Soc.	.	.	.	.	„ Building Society.
Bp.	.	.	.	.	„ Bishop.
C. A.	.	.	.	.	„ Court of Appeal.
C. & S. L. Ry. Co.	.	.	.	.	„ City & South London Railway Co.
C. O. A.	.	.	.	.	„ Court of Criminal Appeal.
C. O. R.	.	.	.	.	„ County Court Rules.
C. O. R.	.	.	.	.	„ Court of Crown Cases Reserved.
C. L. P. Act	.	.	.	.	„ Common Law Procedure Act.
C. L. Ry. Co.	.	.	.	.	„ Central London Railway Co.
C. O. R.	.	.	.	.	„ Crown Office Rules.
C. S. U. C.	.	.	.	.	„ Consolidated Statutes of Upper Canada.
Ca. sa.	.	.	.	.	„ <i>Capias ad satisfaciendum</i> .
Cale. Ry. Co.	.	.	.	.	„ Caledonian Railway Co.
Ch.	.	.	.	.	„ Chancery.
Ch. Div.	.	.	.	.	„ Chancery Division.
Co.	.	.	.	.	„ Company
Co-op. Assocn.	.	.	.	.	„ Co-operative Supply Association.
Comrs.	.	.	.	.	„ Commissioners.
Consd.	.	.	.	.	„ Considered.
Corpn.	.	.	.	.	„ Corporation
Ct.	.	.	.	.	„ Court.
Ct. of Ch.	.	.	.	.	„ Court of Chancery.
Ct. of Eq.	.	.	.	.	„ Court of Equity.
Ct. of R.	.	.	.	.	„ Court of Review
D. C.	.	.	.	.	„ Divisional Court.
Dbtd.	.	.	.	.	„ Doubted.

Deft.	for Defendant.
Distd.	„ Distinguished.
Div. Ct.	„ Divisional Court.
Eccl. Comrs.	„ Ecclesiastical Commissioners.
Eccl. Ct.	„ Ecclesiastical Court.
Ex Ch	„ Exchequer Chamber.
Ex p.	„ <i>Ex parte</i> .
Exch.	„ Exchequer.
Exor.	„ Executor.
Exorship.	„ Executorship.
Expld.	„ Explained.
Extd.	„ Extended.
Extrix.	„ Executrix.
Fi. fa.	„ <i>Fieri facias</i> .
Fold.	„ Followed.
G. & S. W. Ry. Co.	„ Glasgow & South Western Railway Co.
G. C. Ry. Co.	„ Great Central Railway Co.
G. E. Ry. Co.	„ Great Eastern Railway Co.
G. N. of Scotland Ry. Co.	„ Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co	„ Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co.	„ Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland	„ Great Southern & Western Railway Co. of Ireland.
G. W. Ry. Co.	„ Great Western Railway Co.
Govt.	„ Government.
Grds.	„ Guardians or Guardians of the Poor.
H. C. of A.	„ High Court of Australia.
H. L.	„ House of Lords.
I. R. Comrs.	„ Inland Revenue Commissioners.
Insce.	„ Insurance.
JJ.	„ Justices.
Jud. Act	„ Judicature Act.
K. B. Div.	„ King's Bench Division.
L. & B. Ry. Co.	„ London & Brighton Railway Co.
L. & N. W. Ry. Co.	„ London & North Western Railway Co.
L. & S. W. Ry. Co.	„ London & South Western Railway Co.
L. & Y. Ry. Co.	„ Lancashire & Yorkshire Railway Co.
L. B.	„ Local Board.
L. B. & S. C. Ry. Co.	„ London, Brighton & South Coast Railway Co.
L. C.	„ Lord Chancellor.
L. C. & D. Ry. Co.	„ London, Chatham & Dover Railway Co.
L. C. C.	„ London County Council.
L. Elec. Ry. Co.	„ London Electric Railway Co.
L. G. Board	„ Local Government Board.
L. J.	„ Lord Justice.
L. JJ.	„ Lords Justices.
L. T. & S. Ry. Co.	„ London, Tilbury & Southend Railway Co.
M. S. Act	„ Merchant Shipping Act.
M. S. & L. Ry. Co.	„ Manchester, Sheffield & Lincolnshire Railway Co.
Mags.	„ Magistrates.
Mentd.	„ Mentioned.
Met. Dist. Ry. Co.	„ Metropolitan District Railway Co.
Met. Ry. Co.	„ Metropolitan Railway Co.
Mid. G. W. Ry. Co.	„ Midland Great Western Railway Co.
Mid. Ry. Co.	„ Midland Railway Co.
Mtge.	„ Mortgage.
Mtgee.	„ Mortgagee.
Mtgor.	„ Mortgagor.
N. B. Ry. Co.	„ North British Railway Co.
N. E. Ry. Co.	„ North Eastern Railway Co.
N. F.	„ Not Followed.
N. P.	„ <i>Nisi Prius</i> .
Ord.	„ Order.
Overd.	„ Overruled.

ABBREVIATIONS.

xxxiii

P. O.	.	.	.	.	for Privy Council.
Petn.	.	.	.	.	„ Petition or Election Petition.
Pltf.	.	.	.	.	„ Plaintiff.
Q. B. Div.	.	.	.	.	„ Queen's Bench Division.
Qu.	.	.	.	.	„ <i>Quere</i> .
R. C.	.	.	.	.	„ Rural Council.
R. D. C.	.	.	.	.	„ Rural District Council.
R. S. A.	.	.	.	.	„ Rural Sanitary Authority.
R. S. C.	.	.	.	.	„ Revised Statutes of Canada.
R. S. C.	.	.	.	.	„ Rules of the Supreme Court, 1883.
Refd.	.	.	.	.	„ Referred.
Regn. of Trade Mk.	.	.	.	.	„ Registration of Trade Mark.
Regr. of Trade Mks.	.	.	.	.	„ Registrar of Trade Marks.
Resp.	.	.	.	.	„ Respondent.
Restg.	.	.	.	.	„ Restoring.
Revsd.	.	.	.	.	„ Reversed.
Revsg.	.	.	.	.	„ Reversing.
Ry. Co.	.	.	.	.	„ Rail. Co. or Railway Co.
S. C.	.	.	.	.	„ Same Case.
S. O. (name of colony following)	.	.	.	.	„ Supreme Court of a Colony.
S. E.	.	.	.	.	„ Settled Estates.
S. E. & O. Ry. Co	.	.	.	.	„ South Eastern & Chatham Railway Co
S. E. Ry. Co.	.	.	.	.	„ South Eastern Railway Co.
S. P.	.	.	.	.	„ Same Point.
S.S.	.	.	.	.	„ Steamship.
Sched.	.	.	.	.	„ Schedule.
<i>Sci. fa.</i>	.	.	.	.	„ <i>Scire facias</i> .
Sect.	.	.	.	.	„ Section.
Set. Land Act	.	.	.	.	„ Settled Land Act.
Settlmt.	.	.	.	.	„ Settlement.
Soc.	.	.	.	.	„ Society.
Soc. Anon.	.	.	.	.	„ Société Anonyme, etc.
Solr.	.	.	.	.	„ Solicitor.
Trade Mk.	.	.	.	.	„ Trade Mark.
Tram. Co.	.	.	.	.	„ Tramways Company.
U. C.	.	.	.	.	„ Urban Council.
U. D. C.	.	.	.	.	„ Urban District Council
U. S. A.	.	.	.	.	„ United States of America.
Union Assmt. Com.	.	.	.	.	„ Union Assessment Committee.
Urban S. A.	.	.	.	.	„ Urban Sanitary Authority.
V.-C.	.	.	.	.	„ Vice-Chancellor.
Workmen's Comp. Act	.	.	.	.	„ Workmen's Compensation Act.

MEANING OF TERMS

USED IN CLASSIFYING ANNOTATING CASES.

THE different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases, except such as are classified as "Mentioned," are grouped according to the points in the case which they annotate: within these groups they are listed chronologically, except such as are classified as "Referred to," which come at the end of the group and are arranged *inter se* in chronological order. Cases which annotate the annotated case generally are grouped together after cases which annotate specific points, similarly arranged, and are followed by cases classified as "Mentioned" arranged chronologically *inter se*. The terms used in classifying the annotating cases are as follows:—

- "APPLIED" (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.
- "APPROVED" (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.
- "CONSIDERED" (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.
- "DISTINGUISHED" (Distd.).—This expression is used where the earlier case is not necessarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.
- "DOUBTED" (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.
- "EXPLAINED" (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.
- "EXTENDED" (Ext'd.).—Compare "APPLIED," *supra*.
- "FOLLOWED" (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.
- "NOT FOLLOWED" (N.F.).—Compare "FOLLOWED," *supra*, to which it is the adverse.
- "OVERRULED" (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.
- "REFERRED" (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.
- "MENTIONED" (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.

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<i>Debts.</i>	<i>See</i> BANKRUPTCY AND INSOLVENCY.	<i>Habeas Corpus</i>	„ CROWN PRACTICE.
<i>Contempt of County Courts</i>	„ COUNTY COURTS.	<i>Malicious Proceedings</i>	„ MALICIOUS PROSECUTION AND PROCEDURE.
<i>Contempt of Ecclesiastical Courts</i>	„ ECCLESIASTICAL LAW.	<i>Pardon</i>	„ CONSTITUTIONAL LAW.

Part I.—Contempt of Court Generally.

1. What is contempt of court.]—(1) Motion against two printers for publishing a letter abusing defts. who had made affidavits in a cause before the ct.:—*Held*: they would be committed.

(2) It is incumbent upon cts. of justice to preserve their proceedings from being misrepresented, & the minds of the public should not be prejudiced before a cause is heard.

(3) There are three different sorts of contempt. (a) One kind of contempt is, scandalising the ct. itself. (b) There may be likewise a contempt of this ct., in abusing parties who are concerned in causes here. (c) There may be also a contempt of this ct., in prejudicing mankind against persons before the cause is heard (LORD HARDWICKE, C.).—*Re READ & HUGGONSON* (1742), 2 Atk. 469; 26 E. R. 683; *sub nom.* *ROACH v. GARVAN*, Dick. 704, L. C.

Annotations:—As to (1) *Consd. Re American Exchange in Europe, American Exchange in Europe v. Gillig* (1889), 58 L. J. Ch. 706. *Reid. Baker v. Hart* (1742), 2 Atk. 488. As to (2) *Apld. Re Cheltenham & Swansea Railway Carriage & Wagon Co.* (1869), L. R. 8 Eq. 580. *Reid. Tichborne v. Mostyn* (1867), L. R. 7 Eq. 55, n.; *Robson v. Dodds* (1869), 20 L. T. 941; *Tichborne v. Tichborne* (1870), 39 L. J. Ch. 398; *Kiteat v. Sharp* (1882), 52 L. J. Ch. 134; *Re American Exchange in Europe, American Exchange in Europe v. Gillig* (1889), 58 L. J. Ch. 706; *Re Crown Bank, Re O'Malley* (1890), 44 Ch. D. 649; *Dunn v. Bevan, Brodie v. Bevan*, [1922] 1 Ch. 276. As to (3) *Reid. Re Martin, Ex p. Van Sandau* (1844), De G. 55; *Ex p. Van Sandau* (1846), 1 Ph. 605; *Coleman v. West Hartlepool Ry.* (1860), 3 W. R. 734; *Kiteat v. Sharp* (1882), 52 L. J. Ch. 134; *Hunt v. Clarke* (1889), 58 L. J. Q. B. 490; *McLeod v. St. Aubyn*, [1899] A. C. 549; *R. v. Gray*, [1900] 2 Q. B. 36; *R. v. Tibbits* (1901), 71 L. J. K. B. 4; *Scott v. Scott*, [1913] A. C. 417. *Generally, Reid. Ex p. Jones* (1806), 13 Ves. 237; *R. v. Clement* (1821), 4 B. & Ald. 218; *Re Ludlow Charities, Charlton's Case* (1837), 2 My. & Cr. 316.

2. —.]—(1) The power which the cts. in Westminster Hall have of vindicating their own authority is coeval with their first foundation & institution; it is a necessary incident to every ct. of justice, whether of record or not, to fine or imprison for a contempt of the ct. acted in the face of it.

(2) Contempt of ct. involves two ideas, contempt of [the judges'] power & contempt of their authority. The word authority is frequently used to express both the right of declaring the law, which is properly called jurisdiction, & of enforcing obedience to it, in which sense it is equivalent to the word power; but by the word authority I do not mean that coercive power of the judges but the deference & respect which is paid to them & their acts, from an opinion of their justice & integrity.

(3) An act of violence upon [a judge] when he was making an order [at his house or chambers] would be a contempt punishable by attachment (WILMOT, J.).—*R. v. ALMON* (1765), Wilm. 243; 97 E. R. 94.

Annotations:—As to (1) *Consd. Miller v. Knox* (1838), 4 Bing. N. C. 574. *Reid. R. v. Clement* (1821), 4 B. & Ald. 218; *R. v. Davison* (1821), 4 B. & Ald. 329; *Re Martin, Ex p. Turner* (1844), 3 Mont. D. & De G. 523; *Re Martin, Ex p. Van Sandau* (1844), De G. 55; *Ex p. Jolliffe* (1873), 42 L. J. Q. B. 121; *R. v. Lofroy* (1873), L. R. 8 Q. B. 134; *R. v. Martin* (1879), 4 Q. B. D. 212; *R. v. Gray*, [1900] 2 Q. B. 36; *Scott v. Scott*, [1912] P. 241. As to (2) *Reid. R. v. Faulkner* (1835), 2 Cr. M. & R. 525; *R. v.*

Davies, [1906] 1 K. B. 32. As to (3) *Consd. Re Johnson* (1887), 20 Q. B. D. 68. *Reid. Crawford's Case* (1849), 13 Q. B. 613. *Generally, Mentd. Youens v. Keen* (1857), 2 C. B. N. S. 384; *Mersey Docks & Harbour Board v. Penhallow* (1861), 8 Jur. N. S. 486.

3. —.]—The comrs. named in, & charged with the execution of a writ of rebellion, have a right, at their discretion, to require the assistance of any of the liege subjects of the Crown to aid & assist in the execution of the writ. They have the right, upon reasonable apprehension of resistance to the execution of the writ, although no actual resistance has taken place, & as against persons appointed & acting as constables in Ireland under 3 Geo. 4, c. 103. If a stranger to the proceedings in the cause, but liable to be called upon to assist in the execution of a writ of rebellion, be regularly called upon to render such assistance, & decline so to do, the ct. out of which such writ issued may commit such person as guilty of a contempt of ct.

A contempt of ct. is thus described in the Practical Register in Ch. pp. 133, 134: "A contempt is a disobedience to the ct., or an opposing or depising the authority, justice or dignity thereof. It commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required by the process, order or decree of the ct. Sometimes it arises by one or more; their opposing or disturbing the execution or service of the process of the ct. or using force to the party that serves it; sometimes by using words importing scorn, reproach or diminution of the ct. its process, orders, officers or ministers, upon executing or serving such process or orders. It is also a contempt to abuse the process of the ct. by wilfully doing any wrong in executing it; or making use of it as a handle to do wrong; or to do any thing under colour or pretence of process of the ct. without such process or authority;" & the punishment is added; "For any direct & positive contempt, a party may not only be taken into custody but committed during the pleasure of the ct. But for a bare contempt in not doing somewhat, then only till he obey & perform, for a contempt in doing somewhat against the order of the ct., is accounted much greater than omitting to do somewhat commanded, seeing the one is wilful, the other not always so; & besides, what is only not done may be done, but what is once done cannot be undone, though its effects may often be made to cease, or reparation may be made." I cite these passages, because they appear to me to afford a complete answer to one objection which was urged at your Lordships' bar, namely, that process of contempt cannot be issued for a bare nonfeasance (PATTESON, J.).—*MILLER v. KNOX* (1838), 4 Bing. N. C. 574; 6 Scott, 1; 132 E. R. 910, H. L.

Annotation:—*Reid. Scott v. Scott*, [1912] P. 241.

4. Contempt not matter of form.]—Deft. attended in obedience to a *subpœna duces tecum* with which he was served on pltf.'s behalf, but owing to ill health it was deemed advisable for him to remain outside the ct. until he was called. He accordingly remained in waiting until he was

PART I.

11. What is contempt of court?—Cts. have divided contempt into three classes; (1) cases where the ct. issues its attachment against a party who has disobeyed its orders, or treated them with contempt; (2) where parties hav

been attached for writing letters to the judge to obtain, or in order to obtain, a different result to proceedings pending before that judge than might otherwise be the case; (3) cases of constructive contempt, as in cases where parties have been referred to by opprobrious epithets in newspapers.—*BIRCH v.*

WALSH (1846), 10 I. Eq. R. 93.—*IR.*

11. —.]—The essence of contempt is action or inaction amounting to an interference with or obstruction to or having a tendency to interfere with or obstruct due administration of justice.—*Re DUNN*, [1906] V. L. R. 493.—*AUS.*

informed by his attorney that the record had been withdrawn. It appeared that during the absence from the ct., for a few minutes, of deft.'s attorney to fetch his counsel from an adjoining ct., the cause was called on & deft. called on his *subpoena* both within & without the ct., but not hearing himself called he failed to answer, whereupon pltf.'s attorney withdrew the record on the alleged ground that deft. was a material witness in whose absence it was not safe for pltf. to go to trial. A motion, on affidavits, for an attachment against deft. for contempt in not obeying the *subpoena* was made:—*Held*: there was no ground for the application, which was founded on the notion that deft. had been guilty of a contempt. Contempt was not a matter of form but of substance, & the affidavits showed no contempt. The witness attended & was in waiting, ready & willing to be examined as a witness, & it was only because he did not hear himself called that he did not answer, & he had therefore been guilty of no contempt & was not liable to the penalty of attachment.—(LENDINNING v. THOMAS (1862), 6 L. T. 251.

5. Court will not presume contempt.]—The ct. will not presume a contempt, & therefore where an excuse, even ambiguously worded, is offered for the non-attendance of a witness, the ct. will leave the party to his remedy by action or motion for a new trial.—SCHOLES v. HILTON (1842), 10 M. & W. 15; 11 L. J. Ex. 332; 152 E. R. 362.

Annotation:—*Refd.* Hadden v. Parker (1849), 14 J. P. Jo. 4.

6. Whether offence committed—Power of court to decide.]—(1) Cts. are themselves the judges what tone & manner amounts to a contempt of ct.

(2) A return to a writ of *habeas corpus* showed that prisoner had been sentenced for contempt of

the Royal Ct. of Jersey for protesting in ct. "in the most unbecoming tone," & after repeated warnings, against the proceedings of the Royal Ct.:—*Held*: the return was not bad on the face of it, because contempt might be shown by manner as well as by words.—CARUS WILSON'S CASE (1845), 7 Q. B. 984; 1 New Pract. Cas. 193; 6 State Tr. N. S. 183; 14 L. J. Q. B. 201; 5 L. T. O. S. 52; 9 J. P. 665; 9 Jur. 394; 115 E. R. 759.

Annotations:—As to (1) *Consd.* *Ex p.* PATER (1864), 5 B. & S. 299. *Refd.* Crawford's Case (1849), 13 Q. B. 613; Rainy v. Sierra Leone JJ. (1853), 8 Moo. P. C. C. 47; Dodd's Case (1858), 2 De G. & J. 510. *Generally, Mentd.* *Re* Dimes (1850), 19 L. J. Q. B. 158; *Ex p.* Anderson (1860), 25 J. P. 116; *R. v.* Tooke (1884), 48 J. P. 661; *Hell Cox v. Hakes & Ponzone* (1890), 63 L. T. 392; *R. v. Creve, Ex p.* Sekrome, [1910] 2 K. B. 576.

7. ———.]—The Judicial Committee have no jurisdiction to entertain an appeal from orders made by a ct. of record in the Colonies inflicting fines upon a practitioner for contempt of ct., such ct. being the sole judge of what constituted the contempts.—RAINY v. SIERRA LEONE JJ. (1853), 8 Moo. P. C. C. 47; 14 B. R. 19, P. C. Annotations:—*Consd.* McDermott v. British Guiana Judges (1868), L. R. 2 P. C. 341. *Mentd.* *Re* Ramsay (1870), L. R. 3 P. C. 427.

8. ———.]—*Ex p.* PATER, No. 126, *post*. Jurisdiction of court to punish for contempt.]—See Part III., *post*.

9. ———.]—Conclusiveness of report of Master of Crown Office.]—The report of the Master of the Crown Office that deft. & his attorney are in contempt for not obeying an award is to be taken as a conviction, & on defts. being brought up for judgment, the ct. will not receive affidavits in denial of the contempt, but only in mitigation of punishment.—COULSON v. GRAHAM (1814), 2 Chit. 57.

Annotation:—*Mentd.* Walmsley v. Mundy (1884), 13 Q. B. D. 807.

Part II.—Distinction Between Criminal and Non-criminal Contempt.

10. General principles of distinction.]—(1) Privilege of Parliament discussed (See No. 976, *post*).

(2) The clandestine removal of a ward of ct. from the custody of the person with whom such ward has been residing under the authority of the ct., is in its nature a criminal contempt.

(3) A member of the House of Commons carried off his infant daughter, a ward of the ct., from the house of the ladies under whose care she had been placed by the guardians appointed by the ct., & on being personally examined by the ct., admitted the fact, & refused to state the present residence of his daughter:—*Held*: he would be ordered to be committed although he was not a party to the suit.

(4) With respect to the distinction between civil & criminal contempts, I agree that there may oftentimes be a difficulty in finding, first, authority for deciding where the line is to be drawn, & secondly, instances in practice for drawing it.

5 i. Court will not presume contempt.]—Contempt of ct. being a criminal offence, nothing will be inferred, & it is necessary to prove the offence with particularity.—*Re* SCARFE (1896), 5 B. C. R. 153.—CAN.

6 i. Whether offence committed—Power of court to decide—Reviewing facts.]—While a power resides in any ct. or judge to commit for contempt,

it is the power or privilege of such ct. or judge to determine on the facts, & it does not belong to any higher tribunal to examine into the truth of the case.—*Re* CLARKE (1850), 7 U. C. R. 223.—CAN.

6 ii. ———.]—YOUNG v. SAYLOR (1892), 23 O. R. 513; 20 A. R. 645.—CAN.

9 i. ———.]—Conclusiveness of master's

certificate.]—FRENCH v. FRENCH (1824), 1 Hog. 138.—IR.

9 ii. ———.]—Master proper person to decide whether order disobeyed.]—PAXTON v. DRYDEN (1873), 6 P. R. 83.—CAN.

9 iii. ———.]—Report of examiner—On refusal to answer by witness—Certificate requisite.]—CLARK v. ALLEN (1873), 43 U. C. R. 242.—CAN.

Yet that line has been recognised by the Ct. of K. B. in *Catmur v. Knatchbull* [7 Term Rep. 448] & *Walker v. Grosvenor (Lord)* [7 Term Rep. 171]. The former was the case of non-performance of an award, made a rule of ct.; for non-performance, being a disobedience, was a contempt of the ct. & so might be regarded as technically speaking & in form an offence. But the ct. held that as it related simply to a civil matter, & was rather in the nature of process to compel the performance of a specific act, the matter was in substance not criminal but civil, & it refused to commit deft., a member of Parliament, for his disobedience. The same doctrine was laid down in the other case, where the non-compliance was by a peer. But suppose the matter to have been criminal, though without breach of the peace; suppose, for instance, an interruption or obstruction of the ct.'s business by a man, having privilege of Parliament, getting up & stopping the ct. by a long harangue, by ribaldry, by invective, by slander, or by any

other indecency which human wit may fancy, or human folly may practice, is it possible to doubt that the ct. would order its officer to seize him forthwith & remove & commit him to confinement, as a person, who, in the face of the ct., had been guilty of a contempt of a criminal & not of a civil kind (LORD BROUGHAM, C.).—WELLESLEY v. BEAUFORT (DUKE) (1831), 2 Russ. & M. 639; 39 E. R. 538; *sub nom. Re LONG WELLESLEY*, 2 State Tr. N. S. 911, L. C.

Annotations:—As to (1) *Consd. Re Ludlow Charities, Charlton's Case* (1837), 2 My. & Cr. 316; *Re Anglo-French Co-op. Soc.* (1880), 49 L. J. Ch. 388. *Appld. Re Freston* (1883), 11 Q. B. D. 545; *Re Gent, Gent-Davis v. Harris* (1888), 40 Ch. D. 190. *Consd. Re Armstrong, Ex p. Lindsay*, [1892] 1 Q. B. 327. *Reid. Re Charity Comrs. of England, Ex p. Tamworth School* (1868), 18 L. T. 233; *R. v. Castro, Onslow's & Whalley's Case* (1873), L. R. 9 Q. B. 219; *Seldon v. Wilde*, [1911] 1 K. B. 701. *As to (4) Reid. Seldon v. Wilde*, [1911] 1 K. B. 701. *Generally, Reid. Gossett v. Howard* (1847), 11 Jur. 750. *Mentd. Stockdale v. Hansard* (1839), 9 Ad. & El. 1; *Re Martin, Ex p. Van Sandau* (1844), De G. 55; *Re Martin, Ex p. Van Sandau* (1846), De G. 303.

11. —]—(1) An application by a party to a divorce suit for an attachment against a person not a party to the action for contempt of ct. in the publication of comments calculated to prejudice the fair trial of the action, is a "criminal cause or matter" within the meaning of Jud. Act, 1873 (c. 66), s. 47, & no appeal from an order made upon such an application can be brought to the Ct. of Appeal.

Of course, there are many contempts of ct. that are not of a criminal nature, for instance, when a man does not obey an order of the ct. made in some civil proceeding to do or to abstain from doing something, as where an injunction is granted in an action against a deft., & he does not perform what he is ordered to perform. & then a motion is made to commit him for contempt, that is really only a procedure to get something done in the action, & has nothing of a criminal nature in it. But what gives the ct. the power to act is the fact that applt. has done something to prevent the course of justice by preventing the divorce suit from being properly tried. That is clearly a contempt of ct. of a criminal nature. Authorities have been cited which show that everything done to prejudice the judge or jury in the trial of an action is a criminal act, because it is an attempt to prevent the course of justice. There are obviously contempts & contempts; there is an ambiguity in the word; & an attachment may sometimes be regarded as a civil proceeding. For instance, where an order was made by the Ct. of Ch. in former days there was no mode of enforcing such order but by attachment. We must not, therefore, be misled by the words contempt & attachment, but we must look at the substance of the thing. In the present case I have no doubt that the proceeding is a summary conviction for a criminal offence, & therefore no appeal lies (LINDLEY, L.J.).

There are different kinds of attachment for contempt. One kind of attachment is to enforce obedience to an order made in a civil action or proceeding, against one of the parties, in respect

of something the doing or not doing of which is not a criminal act. That would not be an order in a "criminal cause or matter" within Jud. Act, 1873 (c. 66), s. 47. But there is another kind of attachment which is the subject of an independent application against a person who is not a party to the suit in respect of an act done outside the suit, & which act is criminal. That, I think, is within the words of Jud. Act, 1873 (c. 66), s. 47 (LOPES, L.J.).

(2) It is convenient that the notice [of motion] should be intitled in the cause to show to what matter the motion to commit refers (COTTON, L.J.).—O'SHEA v. O'SHEA & PARNELL (1890), 15 P. D. 59; 59 L. J. P. 47; 62 L. T. 713; 38 W. R. 374; 6 T. L. R. 221; 17 Cox, C. C. 107, C. A.

Annotations:—As to (1) *Consd. Re Evans, Evans v. Noton*, [1893] 1 Ch. 252; *Scott v. Scott*, [1913] A. C. 417. *Reid. Re Ashwin, Ex p. Ashwin* (1890), 25 Q. B. D. 271; *Lewis v. Owen*, [1894] 1 Q. B. 102; *Eccles v. Louisville & Nashville Railroad Co.* (1911), 56 Sol. Jo. 74.

12. —]—SCOTT v. SCOTT, No. 301, *post*.

13. Distinguishing characteristics of criminal contempt—No privilege from arrest.]—WELLESLEY v. BEAUFORT (DUKE), No. 10, *ante*.

14. —]—A barrister, who was also a Member of Parliament, appeared before a master, as counsel in support of a petition presented by himself & others; & he afterwards addressed a letter to the master, which was expressed in threatening terms, & the tendency of which was to induce the master to alter the opinion he was supposed to have formed upon the case, & he subsequently wrote a letter to the Lord Chancellor, in which he avowed the authorship of the letter to the master. The Lord Chancellor committed him during pleasure.

C., as a member of the House of Commons, & as a barrister, must very well have known that no longer ago than the year 1831 a case occurred [*Wellesley v. Beaufort (Duke)*, No. 10, *ante*] which involved a question precisely similar to the present. It was a matter of discussion in this ct. & of inquiry in the House of Commons, & it led to the same result as has followed the investigation in this case, namely, the resolution of a Committee of Privileges, that, for contempts of this ct., the House of Commons, most properly, do not consider a member of their House as privileged. By contempt of this ct., I mean that species of contempt of which the party was guilty in the case in 1831, & of which C. has been adjudged guilty in this case (LORD COTTENHAM, C.).—*Re LUDLOW CHARITIES, LECHMERE CHARLTON'S CASE* (1837), 2 My. & Cr. 316; 6 L. J. Ch. 185; 40 E. R. 661, L. C.

Annotations:—*Consd. Re Anglo-French Co-op. Soc.* (1880), 49 L. J. Ch. 388. *Appld. Re Freston* (1883), 11 Q. B. D. 545. *Reid. Gossett v. Howard* (1847), 11 Jur. 750; *Re Charity Comrs. of England, Ex p. Tamworth School* (1868), 18 L. T. 233; *Scott v. Scott*, [1913] A. C. 417. *Mentd. Stockdale v. Hansard* (1839), 9 Ad. & El. 1; *Re Martin, Ex p. Van Sandau* (1844), De G. 55; *Ex p. Van Sandau* (1846), 1 Ph. 605; *Smith v. Lakeman* (1856), 26 L. J. Ch. 305; *Shaw v. Shaw* (1861), 2 Sw. & Tr. 517; *Re Wallace* (1866), L. R. 1 P. C. 283; *R. v. Murphy* (1869), L. R. 2 P. C. 535; *R. v. Onslow & Whalley* (1873), 13 Cox, C. C. 358; *R. v. Skipworth, R. v. De Castro* (1873), 12 Cox, C. C. 371.

PART II.

13.1. Distinguishing characteristics of criminal contempt—Setting court at naught.]—Deft. in an action of ejectment, after possession had been taken over by the sheriff, forcibly regained possession of the lands. An order was obtained to attach him for contempt of ct., & he was arrested. On a motion to discharge the prisoner from custody:—*Held: he was in custody under process of a criminal nature, & not of a civil nature.*

No clearer case than the present could exist in which the attachment is punitive & disciplinary, since it is one in which the ct. itself is concerned as between itself & deft. The ct.'s process has been set at naught, & what it has ordered to be done has been undone. If an attachment directed against a member of the public who has set the ct. at naught is a criminal matter, then a fortiori such is the case when it is directed against the very deft. who not only refuses the ct.'s

aid, but renders the ct.'s judgment of no effect, which has been executed (PALLES, L.C.B.).—SMITH v. MOLLOY (1905), 31 I. L. T. 221.—IR.

a. Newspaper comment on pending trial—Criminal contempt.]—An application to punish as contempt of ct. for publication in a newspaper of matter calculated to interfere with the due administration of justice in its nature criminal.—*Ex p. SMITH* (1901), 1 S. R. N. S. W. 55.—AUS.

15. — — —.]—An order was made directing a solr. to deliver up certain documents, to pay a sum of money & the costs of the order. This being disobeyed, the persons in whose favour the order was made obtained an order for attachment. Before this order was executed the solr. did all he was directed to do except paying the costs. He was afterwards arrested while returning to his office from defending a client at a preliminary inquiry before a police magistrate. He applied to the ct. for his discharge, on the ground that he was at the time privileged from arrest:—*Held*: the attachment, being an attachment for disobedience of an order made on a solr., was punitive & disciplinary in its nature, & that against an arrest under such an order no privilege existed.

It is clear that there is no privilege from arrest upon a criminal charge, but the privilege does apply as to arrest upon mesne process, & upon judgments for debts & other causes of action. It is clear that the privilege can be successfully claimed by Members of Parliament, by witnesses going to or coming from cts. of justice in obedience to *subpoenas*, & by solrs. & barristers attending cts. to discharge their professional duties. It has been said in the Q. B. Div. that all attachments for contempt of ct. are the same & have the same incidents. I cannot assent to this. I think that the incidents are different, because the nature of contempts is different. The question depends upon the kind of contempt. In the Ct. of Ch. attachment for contempt might be merely a means of enforcing obedience to a decree, which was a judgment upon a dispute as to a civil right between the parties to the suit; a decree of the Ct. of Ch. was of the same nature as a judgment of the cts. of common law; & I think, that as to contempts of this nature, privilege would apply. There were, however, other kinds of contempt in which attachments were granted for the purpose of preventing a breach of the law & of maintaining the discipline of the cts., & in these cases the question is whether the attachment is more like criminal or civil process, whether it is more like arrest for a crime, or more like the enforcement of a decree in a suit between parties. Process to enforce civil obligations is subject to privilege, but process for acts in the nature of offences is not. Attachments are granted for neglect of obedience to the orders of cts. of justice; when they are issued merely for the purpose of enforcing judgments in civil disputes, & when the breach of the order to do or not to do something cannot be said to be in the nature of an offence, then the privilege can be claimed; but where an attachment is issued for a breach of the law, or as a remedy for something that is a breach of the law & in the nature of an offence, no privilege can be claimed (BRETT, M.R.).—*Re FRESTON* (1883), 11 Q. B. D. 545; 52 L. J. Q. B. 545; 49 L. T. 290; 31 W. R. 804, C. A. Annotations.—*Consd. Re Dudley* (1883), 12 Q. B. D. 44; *Harvey v. Harvey* (1884), 26 Ch. D. 644; *Re Wray* (1887), 36 Ch. D. 138; *Re Gent, Gent-Davis v. Harris* (1888), 40 Ch. D. 190; *Re Grey*, [1892] 2 Q. B. 440; *Seldon v. Wilde*, [1911] 1 K. B. 701; *Scott v. Scott*, [1913] A. C. 417. *Reid. Re Evans, Evans v. Noton*, [1893] 1 Ch. 252; *Seaward v. Paterson* (1897), 66 L. J. Ch. 267. *Menid. Re Wickham, Marony v. Taylor* (1887), 35 Ch. D. 272; *Haydon v. Haydon* (1911), 104 L. T. 477. As to privilege from arrest for contempt generally, see Part VI., Sect. 8, *post*.

16. — — — No right of appeal—Judicature Act, 1873 (c. 66), s. 47.]—(1) To a writ of *habeas corpus* issued at the instance of the parent of a child, which had been wrongfully detained by deft., a return was made by deft. to the effect that, as he

had, before the issuing of the writ, parted with the custody of the child so detained by him to another person who had taken her out of the jurisdiction, it was impossible for him to obey the writ:—*Held*: it was no excuse for non-compliance with the writ that deft. had wrongfully handed over the child to another person, & therefore, the return was bad, & an attachment must issue against deft. for disobedience to the writ.

(2) An appeal lies to the Ct. of Appeal against an order for an attachment for disobedience to a writ of *habeas corpus*.

The object of the attachment is to enforce the delivery up of the child. The appeal is from an order quashing the return to the *habeas corpus* & directing the issue of an attachment. That is a civil, not a criminal, matter, & sect. 47 of the above Act does not apply (LINDLEY, L.J.).

In my opinion an appeal lies, & for this reason, that an order for the issue of an attachment which is made to enforce the doing of something, the not doing of which is not criminal is not a "judgment in a criminal cause or matter" within sect. 47 [of the above Act] (LORD ESHER, M.R.).—*R. v. BARNARDO* (1889), 23 Q. B. D. 305; 58 L. J. Q. B. 553; 61 L. T. 547; 54 J. P. 132; 37 W. R. 789; 5 T. L. R. 673, C. A.

Annotations.—As to (1) *Dhdt. Barnardo v. Ford*, Gossage's Case, [1892] A. C. 326. As to (2) *Dhdt. O'Shea v. O'Shea & Parnell* (1890), 15 P. D. 59. *Consd. Seaman v. Burley*, [1896] 2 Q. B. 314. *Reid. Cox v. Bakes* (1890), 15 App. Cas. 506; *Re Evans, Evans v. Noton*, [1893] 1 Ch. 252; *Eccles v. Louisville & Nashville Railroad Co.* (1911), 56 Sol. Jo. 74; *R. v. Manchester Local Profiteering Committee, Ex p. L. & Y. Ry.* (1920), 89 L. J. K. B. 1089.

17. — — —.]—O'SHEA v. O'SHEA & PARNELL, No. 11, *ante*.

18. — — —.]—SCOTT v. SCOTT, No. 301, *post*.

As to appeals generally, see Part VI., Sect. 9, *post*.

19. — — — Exercise of Crown's power of pardon.]

—A letter published in a colonial newspaper contained criticisms on the conduct of the Chief Justice of the colony of such a nature that it might have been made the subject of proceedings for libel, but was not in the circumstances calculated to obstruct or interfere with the course of justice or the due administration of the law. It appeared that the editor had, on notice from the ct., refused to discover the name of the writer, & had thereupon been sentenced to fine & imprisonment during pleasure for the publication, & to fine or imprisonment for the refusal, & to further imprisonment till the fines were paid, but had been released by order of the Governor:—*Held*: (1) the publication of the letter did not constitute a contempt of ct.; (2) the Governor had, under his commission, power in the circumstances to remit the sentence; (3) assuming the editor had been guilty of contempt of ct. the sentence passed was in accordance with law.—*Re BAHAMA ISLANDS, SPECIAL REFERENCE FROM*, [1893] A. C. 138; *sub nom. Re MOSELEY*, 62 L. J. P. C. 79; 68 L. T. 105; 57 J. P. 277, P. C.

Annotation.—As to (2) *Reid. Seaward v. Paterson*, [1897] 1 Ch. 545.

20. Disobedience to order of court—Distinguished from criminal contempt.]—O'SHEA v. O'SHEA & PARNELL, No. 11, *ante*.

21. — — —.]—A solr. trustee was made deft. in an administration action, but did not appear. Orders were made on him to attend for examination, which he disobeyed. Pltf. then obtained an order for attachment. The notice of motion for the attachment was not served

Parts II. & III. Sects. 1, 2 & 3: Sub-sect. 1, A. & B.]

personally on deft., but filed under R. S. C., Ord. 67, r. 4:—*Held*: (1) personal service was not essential; (2) the filing of the notice was sufficient service; (3) attachment & not committal was the proper remedy.

(4) *Semle*: the contempt was not so far of a criminal nature as to make the order for attachment one made in a criminal cause or matter within Jud. Act, 1873 (c. 66), s. 47, & therefore an appeal lay to the Ct. of Appeal from an order giving leave to issue a writ of attachment in such cases.—*Re EVANS, EVANS v. NOTON*, [1893] 1 Ch. 252; 62 L. J. Ch. 413; 68 L. T. 271; 41 W. R. 230; 9 T. L. R. 108; 37 Sol. Jo. 101; 2 R. 216, C. A.

Annotations:—*As to* (1) *Distd. Re Bassett, Bassett v. Bassett* (1894), 38 Sol. Jo. 564. *Reid. Favard v. Favard* (1896), 75 L. T. 664; *Taylor, Plinston v. Plinston*, [1911] 2 Ch. 368. *As to* (3) *Reid. D. v. A.*, [1900] 1 Ch. 484. *Generally, Mentd. Townsend v. Townsend* (1905), 93 L. T. 680; *Re Weatherley* (1913), 88 L. J. K. B. 482.

22. ———.]—(1) There is a clear distinction between a motion to commit a man for breach of an injunction on the ground that he was bound

by the injunction, & a motion to commit a man on the ground that he has aided & abetted deft. in a breach of an injunction. In the first case the order is made to enable pltf. to get his rights; in the second, because it is not for the public benefit that the course of justice should be obstructed.

(2) The ct. has undoubted jurisdiction to commit for contempt a person not included in an injunction or a party to the action who, knowing of the injunction, aids & abets a deft. in committing a breach of it.

(3) The ct. ought to be very chary in committing people for contempt, particularly in cases of fanciful contempt. The ct., unless it is to become useless, must deal with such questions in the interest of the public, bearing in mind that the greater the power it possesses the more caution it is necessary to use in exercising it (*LINDLEY, L.J.*).—*SEAWARD v. PATERSON*, [1897] 1 Ch. 545; 66 L. J. Ch. 267; 76 L. T. 215; 45 W. R. 610; 13 T. L. R. 211, C. A.

Annotations:—*As to* (1) *Reid. Scott v. Scott*, [1913] A. C. 417. *Generally, Mentd. Brydges v. Brydges & Wood*, [1909] F. 187; *Hubbard v. Woodfield* (1913), 57 Sol. Jo. 729; *Re J.* (1913), 108 L. T. 554.

23. ———.]—*SCOTT v. SCOTT*, No. 301, *post*.

Part III.—Jurisdiction to Commit or Fine for Contempt.**SECT. 1.—NATURE AND ORIGIN OF.**

24. **General survey.**—*R. v. ALMON*, No. 2, *ante*.
Punishment by indictment.—*See CRIMINAL LAW & PROCEDURE.*

SECT. 2.—SUPERIOR COURTS OF RECORD.

Contempt of Parliament.—*See PARLIAMENT.*

25. **Right inherent in.**—*R. v. ALMON*, No. 2, *ante*.

26. ———.]—Every ct. possesses inherent authority to prevent contempt of its proceedings, & exercises censorial power over its officers.—*HAMILTON v. ANDERSON* (1858), 6 W. R. 737; 3 Macq. 363, H. L.

Annotations:—*Mentd. Haggard v. Pellicier*, [1892] A. C. 61; *Everett v. Griffiths*, [1921] 1 A. C. 631.

27. ——— **Nisi Prius judge.**—A judge at *Nisi Prius* has the power of fining deft. for a contempt committed by him in the course of addressing the jury.

No man who pretends to any knowledge of the law can doubt, that a judge of a ct. of record has authority to fine or imprison for any contempt, committed in the face of the ct. (*BEST, J.*).—*R. v. DAVISON* (1821), 4 B. & Ald. 329; 1 State Tr. N. S. App. 1366; 106 E. R. 958.

Annotations:—*Reid. Re Crawford* (1849), 13 Jur. 955. *Mentd. Re Pollard* (1868), L. R. 2 P. C. 106; *Bowman v. Secular Soc.*, [1917] A. C. 406.

28. ——— **Gaol delivery.**—A ct. of general gaol delivery has the power to make an order to prohibit the publication of the proceedings pending a trial likely to continue for several successive days, & to punish disobedience to such order by fine.—*R. v. CLEMENT* (1821), 4 B. & Ald. 218; 106

E. R. 918; *subsequent proceedings, sub nom. Re CLEMENT* (1822), 11 Price, 68.

Annotations:—*Reid. Il. v. Faulkner* (1835), 2 Cr. M. & H. 525; *Ex p. Fernandez* (1861), 10 C. B. N. S. 3. *Mentd. Scott v. Scott*, [1913] A. C. 417.

29. ——— **Court of Exchequer.**—If a person, against whom an order is applied for, has been guilty of a contempt, the Ct. of Exchequer would have power to deal with such a case, because every ct. must possess, as incidental to its jurisdiction, the power of committing for contempt (*ABINGER, C.B.*).—*HAYWARD v. GIFFARD & GROVE* (1838), 4 M. & W. 194; 6 Dowl. 699; 1 Horn. & H. 192; 7 L. J. Ex. 256; 2 Jur. 661; 150 E. R. 1399.

Annotations:—*Mentd. Doe d. Wright v. Smith* (1840), 8 Dowl. 517; *Evans v. Rees, Rees v. Evans* (1842), 2 Q. B. 334; *Ram Coomar Coondoo v. Chunder Canto Mookerjee* (1876), 2 App. Cas. 186.

30. ——— **Court of Review.**—The Ct. of Review has jurisdiction to commit for publishing insulting observations on the ct. & on parties engaged in litigation before it, with reference to proceedings on a particular bkpcy., as a contempt, & may make the order for committal, upon the petition of the parties aggrieved, & may by such order direct the person committed to pay all petitioner's costs, charges & expenses.

As to the other part [of the petition], on which I am called upon to exercise, for the first time, a jurisdiction in the case of contempt. It is impossible, in my mind, to question that such a jurisdiction is inherent in this ct. as a ct. of record, without which its constitution as a ct. of record would be altogether useless (*SIR G. ROSE*).—*Re MARTIN, Ex p. TURNER* (1844), 3 Mont. D. & De G. 523; 2 L. T. O. S. 375; 8 Jur. 223, Ct. of R.

Annotations:—*Reid, Re Martin, Ex p. Van Sandau* (1844), De G. 55; *Ex p. Van Sandau* (1846), 1 Ph. 605.

PART III. SECT. 1.

b. **Why jurisdiction exists.**—The reason of the ct.'s jurisdiction to commit for contempt is not for the protection of the dignity of the ct. or of its individual members, but for the protection of the public.—*R. v. HARDY* (1906), 27 N. L. R. 206.—S. AF.

c. ———.]—The power of punish-

ing summarily contempts rests on necessity & immemorial custom.—*R. v. PARSONS* (1835), 2 Nfld. L. R. 58.—NFLD.

PART III. SECT. 2.

25 i. **Right inherent in.**—Superior cts. have an inherent power to punish summarily contempts.—*R. v. PARSONS* (1835), 2 Nfld. L. R. 58.—NFLD.

25 ii. ———.]—A superior ct. has jurisdiction to originate proceedings to punish a contempt committed by any one, whether committed in presence of the ct. or not.—*Re YOUGHAL ELECTION PETITION, BARRY'S CASE* (1869), 1 R. 3 C. L. 637.—IR.

d. **By trial judge.**—*KAY v. HANINGTON* (1873), 1 Pug. 331.—CAN.

31. — **Chancery Court—Isle of Man.**—*Re CRAWFORD*, No. 162, *post*.

32. — **Court of Assize.**—*Ex p. FERNANDEZ*, No. 894, *post*.

33. — **King's Bench.**—*Ex p. PATER*, No. 126, *post*.

34. **Judge at chambers.**—*SALM KYRBURG v. POSNANSKI*, No. 696, *post*.

35. — **Contempt outside chambers.**—*Re JOHN-SON*, No. 97, *post*.

36. **Court of Chancery—Contempt against Charitable Commissioners.**—A question arose whether contempt against Comrs. of Charitable Uses was punishable in the Ct. of Ch. It was insisted it was, since under a commission of bkpcy. the orders of the comrs. had been enforced by the Great Seal, & so in commissions of lunacy, the Great Seal had interposed to enforce the orders of the comrs., & the authority of the comrs. in the present case was derived from the Great Seal, & as such, any contempt of it was punishable by the Great Seal:—*Held*: the contempt was punishable by the Great Seal.—*CHARITABLE USES COMRS. v. HICKS* (1731), *Dick.* 61; 21 E. R. 190.

See, further, *CHARITIES*, Vol. VIII., p. 380, Nos. 1934, 1937.

37. **Court of Bankruptcy.**—The Ct. of Bkpcy. has all the powers of a superior ct. to enforce obedience to its own orders by process of contempt.

A witness refused to answer the questions put to him at a sitting appointed for his examination, & neglected to pay the costs of such sitting in compliance with an order of the ct. to that effect:—*Held*: the ct. would grant a warrant for his commitment under Bkpcy. Act, 1861 (c. 134), s. 226.—*Re TOWSEY, Ex p. TOWSEY'S ASSIGNEES* (1864), 10 L. T. 620.

See, further, *BANKRUPTCY & INSOLVENCY*, Vol. IV., p. 35, Nos. 301, 302.

38. **Master in Lunacy—Lunacy Act, 1891 (c. 65), s. 26 (2).**—A master who is holding an inquisition in Lunacy has power to order a writ of attachment to issue against an alleged lunatic for the purpose of enforcing his attendance in compliance with an order made under sect. 26 (2) of the above Act, but as a matter of convenience & discretion it is more desirable that he should refer such matters to the Lords Justices sitting in open ct.—*Re B—(AN ALLEGED LUNATIC)*, [1892] 1 Ch. 459; 66 L. T. 38; 40 W. R. 369; 36 Sol. Jo. 184; *sub nom. Re BATHE*, 61 L. J. Ch. 446, C. A.; *subsequent proceedings, sub nom. Re BATHE* (No. 2), 61 L. J. Ch. 487, C. A.

39. **Judicial Committee of Privy Council.**—Upon a motion from the Judicial Committee against the judge & registrar of the Vice-Admty. ct. of Gibraltar to transmit the proceeds arising from the sale of a vessel decreed to be forfeited & sold subsequent to an appeal being asserted, & an inhibition issued & served, the whole amount of the proceeds must be brought into ct., & not the

balance remaining after deducting the costs & fees incident to the seizure & sale. The refusal to comply with such monition is a contempt, & an attachment for such will be granted by the Judicial Committee against the judge, registrar & marshal of the Vice-Admty. ct.—*BARTON v. R.* (1840), 2 Moo. P. C. C. 19; 12 E. R. 909, P. C.; *subsequent proceedings, sub nom. BARTON v. FIELD, THE WINWICK* (1843), 4 Moo. P. C. C. 273, P. C. *Annotations*:—*Mentd.* *Hocquard v. R.*, The Newport (1857), 11 Moo. P. C. C. 156; The Newport (1858), Sw. 317; *Casanova v. R.*, The Ricardo Schmidt (1866), L. R. 1 P. C. 268.

As to power of ct. to attach & commit for disobedience to order of Irish ct., *see CONFLICT OF LAWS*, Vol. XI., p. 470, Nos. 1248-1251.

As to power of High Ct. to enforce order of Palatine Ct. of Lancaster against deft. out of jurisdiction of that ct., *see COURTS*, p. 195, No. 1005, *post*.

SECT. 3.—KING'S BENCH DIVISION.

SUB-SECT. 1.—CONTEMPT OF OTHER COURTS.

A. Other Superior Courts.

40. **Divorce Court—For payment of costs.**—A judge of the Q. B. Div. has no jurisdiction to order a writ of attachment to issue against resp. for disobeying an order for payment of costs made against him in a suit in the Divorce Ct.—*COOK v. COOK* (1885), 2 T. L. R. 10, D. C.

41. **Central Criminal Court.**—*R. v. ARMSTRONG* (1891), *Times*, May 9.

Annotations:—*Refd.* *R. v. Parke*, [1903] 2 K. B. 432; *R. v. Davies*, [1906] 1 K. B. 32.

42. — *GORDON v. JONES* (1895), 31 L. Jo. 8.

Annotations:—*Dbtd.* *R. v. Parke*, [1903] 2 K. B. 432, *R. v. Davies*, [1906] 1 K. B. 32.

B. Inferior Courts.

43. **General rule.**—The K. B. Div. has power to punish by attachment contempts of inferior cts. Where, a person having been charged at the petty sessions with an indictable offence triable either at the assizes or at quarter sessions, matter is published in a newspaper tending to interfere with the fair trial of the charge, the K. B. Div. has jurisdiction to attach the publisher of such matter for contempt of ct., notwithstanding that at the time of the publication it is uncertain whether the person charged, if committed at all, will be committed to the assizes or to the quarter sessions.—*R. v. DAVIES*, [1906] 1 K. B. 32; 75 L. J. K. B. 104; 54 W. R. 107; 50 Sol. Jo. 77; *sub nom. R. v. DAVIES, Ex p. HUNTER*, 93 L. T. 772; 22 T. L. R. 97, D. C. *Annotations*:—*Consd.* *R. v. Clarke, Ex p. Crippen* (1910), 103 L. T. 636. *Apld.* *R. v. Daily Mail Editor, Ex p. Farnsworth*, [1921] 2 K. B. 733. *Refd.* Louth Northern Division Case (1910), 6 O'M. & H. 103.

44. **Contempt of justices—Where order confirmed by King's Bench.**—On a motion for an

34 i. **Judge at chambers.**—A judge sitting in chambers has no jurisdiction to commit for contempt.—*Re TYRONE ELECTION PETITION, MACARTNEY v. CORRY* (1873), 1 L. R. 7 C. L. 242.—*IR.*

e. **Judge in vacation.**—A judge sitting out of term under 1873 Act, does not represent the full ct. so as to enable him to punish for a contempt of such ct.—*R. v. WILKINSON, Re BROWN* (1877), 41 U. C. R. 47.—*CAN.*

i. **Court of Appeal**—38 *Vict. c. 3*, s. 2.—Under above sect. the Ct. of Appeal has the power to punish for contempt in election cases.—*Re LINCOLN ELECTION* (1878), 2 A. R. 353.—*CAN.*

f. — *R. v. WOODYATT* (1895), 27 O. R. 113.—*CAN.*

h. **High Court.**—The jurisdiction of the High Ct. to imprison for contempt is a jurisdiction that it has inherited from the old Supreme Ct., & was conferred upon that ct. by Crown charters, which invested it with all the powers & authority of the then Ct. of K. B. & the High Ct. of Ch. in Great Britain.—*MARTIN v. LAWRENCE* (1879), 1 L. R. 4 Calc. 655.—*IND.*

k. — **Contempt out of court.**—The High Ct. has power to punish summarily by imprisonment contempt of ct. committed out of ct. when the ct. is not sitting.—*SURENDRANATH*

BANERJEA v. BENGAL HIGH CT. (CHIEF JUSTICE, & JUDGES), Re SURENDRANATH BANERJEA (1883), L. R. 10 Ind. App. 171.—*IND.*

PART III. SECT. 3, SUB-SECT. 1.—B.

43 i. **General rule.**—The Supreme Ct. has power to punish by attachment contempts of inferior cts.—*R. v. MCKINNON* (1909), 30 N. Z. L. R. 884.—*N.Z.*

44 i. **Contempt of magistrates.**—A Division of the Supreme Ct. has jurisdiction to punish summarily any one who *ex facie curiae* commits a contempt of a magistrate's ct., which has no power to deal summarily therewith.—

Sect. 3.—King's Bench Division: Sub-sect. 1, B.; sub-sect. 2. Sect. 4: Sub-sect. 1.]

attachment for disobedience of a justices' order, which had been confirmed in K. B. & had been obeyed accordingly for some time, a rule was made to show cause:—*Held*: the rule must be discharged & an attachment denied, because application ought to be made to the justices for a new order, & that was the proper remedy.—*R. v. MILE END (INHABITANTS)* (1701), 1 Ld. Raym. 676; 91 E. R. 1350.

45. ———.]—Rule to show cause why an attachment should not issue for not obeying an order of quarter sessions confirmed in King's Bench made absolute.—*R. v. HOLLAND* (1735), *Lee temp. Hard.* 160; 95 E. R. 102.

46. ———.]—**Quarter sessions.—Disobedience to order of Subpoena.**—The Ct. of K. B. has no power to grant an attachment against a witness for disobeying a subpoena issued out of the ct. of quarter sessions.—*R. v. ROOM* (1834), 3 Nev. & M. K. B. 725; 2 Nev. & M. M. C. 368.

47. ———.]—Upon an indictment for nuisance, tried at a ct. of quarter sessions, the judgment & order of the ct. was that the nuisance be abated:—*Held*: this was not an order which could be made a rule of the Ct. of K. B. & be enforced by attachment under Quarter Sessions Act, 1849 (c. 45), s. 18.—*R. v. BATEMAN* (1857), 8 E. & B. 554; 27 L. J. M. C. 95; 30 L. T. O. S. 150; 4 Jur. N. S. 301; 6 W. R. 63; 21 J. P. Jo. 773; 120 E. R. 218.

48. *S. P. R. v. BATEMAN* (1857), 30 L. T. O. S. 157; 21 J. P. 759.

49. ———.]—**Petty sessions.**—The ct. ordered an attachment *nisi* against the town clerk of G. & a deft. convicted under a penal statute, for granting & suing out a replevin of goods distrained for the penalty. On cause being shown:—*Held*: the rule would be discharged, because it was only a contempt to the inferior jurisdiction of the justices, & in that case the King's Bench never interposed.—*R. v. BURCHETT* (1723), 1 Stra. 567; 8 Mod. Rep. 208; 93 R. R. 704.

Annotations:—Distd. R. v. Parke, [1903] 2 K. B. 432. Consd. R. v. Davies, [1906] 1 K. B. 32.

50. ———.]—**Prejudicial comments pending proceedings.—Before accused committed for trial.**—*R. v. PARKE*, No. 179, *post*.

51. ———.]—*R. v. DAVIES*, No. 43, *ante*.

52. **Contempt of police court.—Comments pending proceedings.**—There is no power in the Q. B. Div. to order an attachment for contempt of ct. in respect of a libellous comment on proceedings pending in a police ct. even though that may not be a ct. of record.—*Re APPLICATION FOR AN ATTACHMENT FOR CONTEMPT OF COURT* (1886), 2 T. L. R. 351, D. C.

Annotations:—Consd. R. v. Parke, Ex p. Dougal (1903), 72 L. J. K. B. 839. *Refd. R. v. Davies, [1906] 1 K. B. 32.*

53. ———.]—**After issue of warrant.—Accused in custody.**—Where after an information on oath has been laid against a person charging him with an offence which may ultimately be tried

in the High Ct., & after a warrant has been issued by a magistrate & accused has been arrested & is in custody under such warrant, statements are published which tend to prejudice the fair trial of the charge, the K. B. Div. has jurisdiction to punish by attachment for contempt of ct. the person who has published such statements, notwithstanding that at the date of the publication of such statements accused had not been brought before a magistrate & charged with the offence.—*R. v. CLARKE, Ex p. CRIPPEN* (1910), 103 L. T. 636; 27 T. L. R. 32, D. C.

54. **Contempt of courts-martial.—By person not subject to military law.—Necessity of certificate from president.**—*Army Act, 1881* (c. 58), s. 126 (3).]

—A newspaper published an account of ct.-martial proceedings, stating the sentence passed on a person accused before the ct. After the sentence had in fact been passed, but before it had been confirmed, or otherwise dealt with by the confirming authority in accordance with *Army Act, 1881* (c. 58), s. 47, the president of the ct.-martial certified, in accordance with sect. 126 (3) of the Act, that the publication of the sentence was a contempt towards the ct.-martial. On a rule *nisi* for attachment for contempt of ct. against the editor of the newspaper by accused:—*Held*: the inherent jurisdiction of the K. B. Div. to protect ct.-martial from contempt had not been limited by sect. 126 (3) of the Act, which related to proceedings for contempt instituted by the ct.-martial itself.

Semble: where the certificate of the president of a ct.-martial is necessary, it must be given at the time the rule *nisi* for attachment is obtained.—*R. v. DAILY MAIL, Ex p. FARNSWORTH, [1921] 2 K. B. 733; 90 L. J. K. B. 871; 125 L. T. 63; 37 T. L. R. 310, D. C.*

Contempt against Commissioners of Charitable Uses.—*See CHARITIES, Vol. VIII., p. 391, No. 2115.*

Punishment by indictment.—*See CRIMINAL LAW & PROCEDURE.*

SUB-SECT. 2.—CONTEMPT BY INFERIOR COURT.

55. **General rule.—Disobedience to order of superior court must be wilful.—Not mere error of judgment.**—An inhibition from the Judicial Committee of the Privy Council to the judge of an inferior ct. is not to be disregarded at his discretion, although he may consider that he is acting for the benefit of all parties, but though he thereby commits an error of judgment, unless such disobedience is wilful, & proceeds from improper motives, the ct. will not visit him with the penal consequences of an attachment for contempt.—*BARTON v. FIELD, THE WINWICK* (1843), 4 Moo. P. C. C. 273; 8 Jur. 113; 13 E. R. 307, P. C.

As to wilful disobedience to orders of courts generally, *see Part V., Sect. 2, sub-sects. 1, 2, post*.

56. **Disobedience to writ for removal of cause.**—*KING v. LANGSTON* (prior to 1717), cited 10 Mod. Rep. p. 350; 88 E. R. 760.

Annotation:—Refd. R. v. Davies, [1906] 1 K. B. 32.

A.-G. v. CROCKETT (1911), T. P. D. 893.—S. AF.

1. **Contempt of Commissioners.**—Wherever the legislature has given authority to comrs., but has not given them the power to punish disobedience to that authority, the Great Seal will lend the aid of its general jurisdiction to enforce the provisions of the legislature by committing for contempt of such comrs.—*Re INGRAM* (1853), 22 T. L. O. S. 55.—IR.

m. *Whether contempt of inferior, necessarily contempt of superior, court.*

—A contempt of an inferior ct. need not necessarily be a contempt of a superior ct.; but facts showing that witnesses before an inferior ct. had been attacked, deterred & frightened or in some manner dissuaded, hindered or prevented from giving evidence may amount to contempt of the superior ct. while an attack upon the judge of the inferior ct., or any endeavour to

corrupt him or any direct obstruction of his proceedings would not, speaking generally, be a contempt of the superior ct.—*LEGAL REMEMBRANCE v. MATILAL GHOSE* (1913), L. L. R. 41 Cal. 173.—IND.

PART III. SECT. 3, SUB-SECT. 2.

56 i. **Disobedience to writ for removal of cause.—Must be wilful.**—An attachment for not obeying a *certiorari* will not be granted against a district judge

57. —.]—Motion for an attachment against the judge of the Ct. of Holderness in Yorkshire for disobeying a writ whereby the cause was to have been removed into the county ct. The ct. made a rule to show cause why an attachment should not be granted.—BURGH v. BLUNT (1717), 10 Mod. Rep. 349; 88 E. R. 759.

Annotation:—*Consd. R. v. Davies*, [1906] 1 K. B. 32.

58. —.]—Proceeding after order for removal.—If an inferior ct. proceed after service & allowance of *habeas corpus*, they are liable to attachment, & proceedings are *coram non judice*.—ELLIS v. JOHNSON (1633), Cro. Car. 261; 79 E. R. 828.

Annotation:—*Mentd. Cross v. Smith* (1702), 2 Ld. Raym. 836.

59. —.]—Commissioners of Sewers imposing fine.—An attachment lies against Comrs. of Sewers for imposing a fine after a *certiorari* delivered.—SMITH'S CASE (1670), 1 Vent. 66; 1 Mod. Rep. 44; T. Raym. 186; 86 E. R. 46; *sub nom. R. v. SMITH*, 1 Lev. 288.

60. —.]—If a *habeas corpus* be delivered to an inferior ct. after issue, yet if the judge is not an utter barrister, & proceeds in the cause, an attachment shall go for the contempt.—ANON. (1686), 3 Mod. Rep. 85; 87 E. R. 54.

61. Refusing foreign plea.—If an inferior ct. refuse a foreign plea, it is a contempt of the superior ct.—BRECON v. NEWTON (1722), 11 Mod. Rep. 364; 88 E. R. 1092.

62. Misconduct of judges of inferior courts.—Motion for an attachment against a steward for discharging a jury before they gave a verdict:—*Held*: all misdemeanours in judicial officers were a contempt of the Ct. of K. B. & attachments went daily against stewards, for granting attachments against all the party's goods, but for error in judgment a judge was not punishable.—ANON. (1702), 1 Salk. 201; Holt, K. B. 184; 91 E. R. 180.

63. —.]—The King's Bench will grant an attachment against the judge of an inferior ct. for misconduct.—WRIGHT v. CRUMP (1702), 2 Ld. Raym. 766; 7 Mod. Rep. 1; 92 E. R. 12.

64. —.]—An attachment lies against the judges of an inferior ct. for granting a new trial after judgment has been given, costs taxed & a year elapsed.—HALL v. HILL (1702), 7 Mod. Rep. 84; Holt, K. B. 184; 3 Salk. 363; 87 E. R. 1110; *sub nom. R. v. HILL*, 1 Salk. 201.

Annotations:—*Mentd. R. v. Day* (1755), Say. 202; R. v. Oxford Corpn. Court Judge (1834), 13 Q. B. 21, n.

SECT. 4.—INFERIOR COURTS OF RECORD.

SUB-SECT. 1.—CONTEMPTS IN FACE OF COURT.

Jurisdiction of county courts to commit for contempt.—See COUNTY COURTS, Vol. XIII., pp. 554, 555, Nos. 1121–1124.

unless he is acting contumaciously.—*Re NIAGARA DISTRICT COURT JUDGE* (1834), 3 O. S. 437.—CAN.

56 ii. —.]—*R. v. OTWAY* (1823), Rowe 407.—IR.

56 iii. —.]—*R. v. GOING* (1824), Rowe 563.—IR.

n. *Disobedience to prohibition*.—*Re STRADMAN, Ex p. BAIRD* (1890), 29 N. B. R. 200.—CAN.

o. *Refusal to take examination*.—An attachment will not be granted against a magistrate for refusing to take an examination unless he appears to have been corrupt or grossly ignorant.—*R. v. JOHNSON* (1794), Ridg. L. & S. 200.—IR.

PART III. SECT. 4, SUB-SECT. 1.

71 i. *Magistrates—Necessity for war-*

Contempt of ecclesiastical courts.—See ECCLESIASTICAL LAW.

65. General rule.—A. being an inhabitant within the manor of K., to which a ct. leet was appendant by prescription, was, at the leet held before the steward according to the custom, chosen to be constable of K. for one year, by the jurors & presenters of the ct. & being present in ct. was charged by the steward to take the oath, which he refused to do, & departed in contempt of the ct. The steward fined him, & because the fine was not paid, the cattle of the said A. were distrained:—*Held*: the fine was well imposed, & the distress well taken.

If any contempt or disturbance to the ct. be committed in any ct. of record, the judges may set upon the offender a reasonable fine.

Cts. which are not of record cannot impose a fine, nor commit any to prison.—GRIESEL'S CASE (1588), 8 Co. Rep. 38 a; 77 E. R. 530; *sub nom. ANON.*, Sav. 93.

Annotations:—*Refd. Crawley's Case* (1640), Cro. Car. 567; *Langham's Case* (1641), March, 179; *R. v. Faulkner* (1835), 5 Tyr. 915; *Mentd. Godfrey's Case* (1614), 11 Co. Rep. 42 a; *James v. Tutney* (1639), Cro. Car. 532; *Fletcher v. Ingram* (1695), 1 Ld. Raym. 69; *Savile v. Roberts* (1698), 1 Ld. Raym. 374; *Groomvelt v. Burwell* (1699), 1 Com. 76; *R. v. Layton* (1710), 11 Mod. Rep. 236; *Edwards v. Hughes* (1736), Gilb. Ch. 209; *R. v. Adlard* (1825), 4 B. & C. 772; *R. v. Mosley* (1835), 3 Ad. & El. 488.

66. —.]—*Ex p. PATER*, No. 126, *post*.

67. —.]—*R. v. LEFROY*, No. 78, *post*.

68. Magistrates.—A magistrate may bind to good behaviour a person who abuses him, but he cannot imprison except while in the duties of his office.—SIMMONS v. SWEETE (1587), Cro. Eliz. 78; 78 E. R. 338.

69. —.]—When words are spoken reflecting upon a justice in his presence, & in the execution of his office, he may commit for a contempt, but where behind his back the offender may be indicted.—*R. v. REVEL* (1721), 1 Stra. 120; 93 E. R. 609.

Annotation:—*Refd. Mayhew v. Locke* (1816), 2 Marsh. 377.

70. —.]—*Qu.*: whether a justice of peace has a right to commit for a contempt when not sitting in ct.—PETTIT v. ADDINGTON (1791), Peake, 87.

71. —.]—Necessity for warrant in writing.—A magistrate cannot commit for a contempt, without a warrant in writing.—MAYHEW v. LOCKE (1816), 7 Taunt. 63; 2 Marsh. 377; 129 E. R. 25.

Annotations:—*Refd. Carus Wilson's Case* (1845), 7 Q. B. 984; *Mentd. James v. Swift* (1825), 6 Dow. & Ry. K. B. 625; *Smith v. Brown* (1831), 1 Tyr. 486.

72. —.]—Refusal of witness to be sworn & give evidence.—Pltf. was committed by a justice "for refusing to give evidence before him, touching a certain riot & disturbance," without showing that there had been a person charged before the justices,

warrant in writing.—A justice may commit for contempt while in the execution of his office, out of sessions, but it must be by a warrant in writing, & for a specified period.—JONES v. GLASFORD (1839), 2 Ont. Dig. 3708.—CAN.

71 ii. —.]—A justice of the peace, while sitting in the discharge of his duty, has the power, without any formal proceeding to order at once into custody any party who by his indecent behaviour or insulting language is obstructing the administration of justice; but he has no power either at the time of misconduct, much less on the next day, to make out a warrant to a constable & to commit the offending party to gaol for any time by way of punishment, without adjudging him formally, after a summons to appear for hearing, to such

punishment on account of his contempt, & making a minute of such sentence.—*Re CLARKE* (1850), 7 U. C. R. 223.—CAN.

71 iii. —.]—Justices of the peace acting judicially are judges of record, & have power to commit to prison orally without warrant, for contempt committed in the face of the ct.—ARMSTRONG v. MCCAFFREY (1869), 1 Ha. 517.—CAN.

71 iv. —.]—*ARMOUR v. BOWWELL* (1843), 6 O. S. 450.—CAN.

71 v. —.]—A justice has no power summarily to punish for contempt *in facie curiae*, at any rate without a formal adjudication & a warrant setting out the contempt.—YOUNG v. SAYLOR (1892), 23 O. R. 513; 20 A. R. 645.—CAN.

Sect. 4.—Inferior courts of record: Sub-sects. 1 & 2.
Sects. 5, 6 & 7.]

& that plff. was apprised of the existence of such charge, with respect to which he was required to be examined as a witness:—*Held*: the warrant of commitment was no justification of the magistrate in an action of trespass.—*CROPPER v. HORTON* (1826), 8 Dow. & Ry. K. B. 166; 4 Dow. & Ry. M. C. 42.

73. — Exercise of jurisdiction at quarter sessions—When reviewed by King's Bench.]—*Ex p. PATER*, No. 126, *post*.

See, further, MAGISTRATES.

74. Court leet.]—GRIESLEY'S CASE, No. 65, *ante*.

75. —.]—The justices [of a ct. leet] are a ct. of record by 27 Eliz., inasmuch as they have a power given them to fine & imprison; & for a contempt done in such ct. undoubtedly the judges of it may commit (*PAGE, J.*).—*R. v. COTTON* (1733), 2 Barn. K. B. 314; 94 E. R. 523.

76. Commissioners of Sewers.]—Comrs. of Sewers being a ct. of record, cannot order any one to be imprisoned for disobedience to an order, though they can for a contempt committed in their presence.—*OLDBERY (INHABITANTS) v. STAFFORD* (1663), 1 Sid. 145; 82 E. R. 1022.

See, further, SEWERS & DRAINS.

77. Commissioner of bankruptcy.]—A comr. of bkpcy. appointed under 1 & 2 Will. 4, c. 56, has no power, when sitting alone, under the authority of sect. 7, to fine or commit for a contempt.—*R. v. FAULKNER* (1835), 2 Cr. M. & R. 525; 1 Gale, 210; 2 Mont. & A. 311; 5 Tyr. 915; 4 L. J. Ex. 308; 150 E. R. 225.

Annotations:—Mentd. Re Hall, Ex p. Hall (1838), 8 L. J. Bey. 5; *Re Martin, Ex p. Van Sandau* (1844), 4 L. T. O. S. 369; *A-G. of New South Wales v. Macpherson* (1870), L. R. 3 P. C. 268.

County courts.]—*See* COUNTY COURTS, Vol. XIII., pp. 554, 555, Nos. 1121–1124.

SUB-SECT. 2.—OTHER CONTEMPTS.

78. General rule.]—*Held*: the jurisdiction of the judge of a county ct. was confined, by County Cts. Act, 1846 (c. 95), s. 113, to contempts committed in ct., & he had no power to proceed against a person for a contempt committed out of ct. *Semble*: inferior cts. of record have only power over contempts *in facie curiæ*.

All cts. of record have power to fine & imprison for any contempt committed in the face of the ct., for the power is necessary for the due administration of justice, to prevent the ct. being interrupted. But it is quite another thing to say that every inferior ct. of record shall have power to fine or imprison for contempt of ct. when that contempt is committed out of ct., as the writing or publication of articles reflecting on the conduct of the judge. There are other remedies for such proceedings. There is an obvious distinction between the superior cts. & other cts. of record. In the case of the superior cts. at Westminster, which represent the one supreme ct. of the land, this power was coeval with their original constitution, & has always been exercised by them. These cts. were originally carved out of the one Supreme Ct., & are all divisions of the *aula regis*, where it is said the King in person dispensed justice, & their power of committing for contempt

was an emanation of the royal authority, for any contempt of the ct. would be a contempt of the Sovereign. But it is a very different matter with respect to the county cts. & similar inferior cts. No case is to be found in which such a power has ever been exercised by an inferior ct. of record, or, at all events, upheld by a decision of the superior cts. (*COCKBURN, C.J.*).—*R. v. LEFROY* (1873), L. R. 8 Q. B. 134; 37 J. P. 566; *sub nom. Ex p. JOLLIFFE*, 42 L. J. Q. B. 121; *sub nom. Re COUNTY COURT JUDGE, Ex p. JOLLIFFE*, 28 L. T. 132; *sub nom. Re LEFROY, Ex p. JOLLIFFE*, 21 W. R. 332.

Annotations:—Apld. R. v. Brompton County Court Judge, [1893] 2 Q. B. 195. *Refd. Ex p. Martin* (1879), 4 Q. B. D. 212; *Lewis v. Owen*, [1894] 1 Q. B. 102; *R. v. Clarke, Ex p. Crippen* (1910), 103 L. T. 636.

79. Disobedience to order—Of Railway Commissioners—Statutory jurisdiction to punish.]—The Railway Comrs. have power to issue a writ of attachment, or impose a penalty not exceeding £200 a day for disobedience to their orders.—*TOOMER v. LONDON, CHATHAM & DOVER RY. CO. & SOUTH EASTERN RY. CO.* (1877), 3 Ry. & Can. Tr. Cas. 79; *subsequent proceedings*, 2 Ex. D. 450.

80. —.]—The Railway Comrs. have power under Regulation of Railways Act, 1873 (c. 48), s. 6, to issue a writ of attachment or impose a penalty not exceeding £200 for disobedience to their orders.—*CHATTERLEY IRON CO. v. NORTH STAFFORDSHIRE RY. CO.* (1878), 3 Ry. & Can. Tr. Cas. 238.

Annotations:—Mentd. G. W. Ry. v. Railway Comrs. (1881), 7 Q. B. D. 182; *Hall v. L. B. & S. C. Ry.* (1885), 4 Ry. & Can. Tr. Cas. 398.

81. — Of county court—Respondent unable to comply.]—A county ct. judge is right in refusing to commit a deft. for disobedience of an order, with which he is unable to comply.—*VALLENTIN v. WOODLEY* (1889), 5 T. L. R. 162, D. C.

82. Contempt of Chancellor's Court of University of Oxford—Action against undergraduate in superior court.]—An attorney, residing at Oxford, had caused a writ of summons to issue from the Queen's Bench in a personal action, at the suit of another party, against a member of the university:—*Held*: the Chancellor's Ct. of the university had not authority, on his refusing to obey a citation, to give judgment, requiring him to stop all proceedings and pay the costs, & to issue a warrant to imprison him till he should have paid them.—*R. v. OXFORD UNIVERSITY (CHANCELLOR, MASTERS & SCHOLARS)* (1841), 1 Gal. & Dav. 537; 11 L. J. Q. B. 37; 6 Jur. 319.

SECT. 5.—COUNTY COURTS.

Jurisdiction of county courts.]—*See* Nos. 78, 81, *ante*; COUNTY COURTS, Vol. XIII., Part X., pp. 554, 555.

SECT. 6.—COURTS NOT OF RECORD.

83. No power to fine or commit.]—*GRIESLEY'S CASE*, No. 65, *ante*.

84. —.]—A ct. which is not of record cannot impose a fine nor commit to prison.—*BEECHER'S CASE* (1608), 8 Co. Rep. 58 a; 77 E. R. 559.

Annotations:—Refd. Langham's Case (1642), March, 179; *Grenville v. College of Physicians* (1700), 12 Mod. Rep. 386; *Groenvolt v. Burwell* (1700), 1 Salk. 200; *Ebon v.*

PART III. SECT. 4, SUB-SECT. 2.

78 i. General rule.]—An inferior ct. cannot at common law, nor unless by

express legislative enactment, commit for any contempt except for a contempt committed in the face of the ct.—*Re PACQUETTE* (1886), 11 P. R.

463.—*CAN.*

78 ii. —.]—*Re ROCHON* (1899), 31 O. R. 122.—*CAN.*

Neville (1861), 10 W. R. 6; Kemp v. Neville (1861), 10 C. B. N. S. 523. *Mentd.* Cotton v. Westcot (1817), Cro. Jac. 441; Hussey v. More (1817), Cro. Jac. 413; Darcy v. Jackson (1821), Palm. 224; Eardley v. Turnock (1822), Cro. Jac. 629; Mason v. Fox (1822), Cro. Jac. 632; Threadneedle v. Linum (1874), Freem. K. B. 179; Coan v. Bowles (1891), 1 Show. 165; Walwin v. Smith (1891), 4 Mod. Rep. 86; Warner v. Green (1701), 12 Mod. Rep. 580; Kent v. Kent (1734), 2 Barn. K. B. 441; R. v. York (1832), 3 B. & Ad. 770; Douglas v. R. (1848), 12 Jur. 974; London Corp'n. v. R. (1848), 13 Q. B. 30.

85. —.]—Wherever a power is given to examine, hear & punish it is a judicial power, & they in whom it reposes act as judges & wherever there is a jurisdiction erected with power to fine & imprison that is a ct. of record. It is held that the very lodging of this power [to imprison] in them made them judges of record. *Nulla curia quæ recordum non habet potest mandare carceri* (HOLT, C.J.).—GROENVELT v. BURNELL (1700), Carth. 491; 1 Com. 76; Holt, K. B. 536; 1 Ld. Rayn. 454; 1 Salk. 200, 396; 91 E. R. 179, 343; *sub nom.* GRENVILLE v. COLLEGE OF PHYSICIANS, 12 Mod. Rep. 386.

Annotations:—Consd. Wildes v. Russell (1866), L. R. 1 C. P. 722. *Refd.* Kemp v. Neville (1861), 7 Jur. N. S. 913; R. v. Nicholson, R. v. Grantham, *Ex p.* Banbor (1899), 81 L. T. 257. *Mentd.* R. v. Green (1714), Gilb. 231; R. v. Scarborough (1728), 1 Barn. K. B. 113; Evans v. Harrison (1762), Wilms. 130; Crowther v. Hambsbottom (1798), 7 Term Rep. 654; R. v. Despard (1798), 7 Term Rep. 736; Britain v. Kinnaird (1819), 1 Brod. & Bing. 432; R. v. Rogers (1822), 1 Dow. & Ry. K. B. 156; Scott v. Byc (1824), 2 Bing. 344; Baston v. Carew (1825), 3 B. & C. 649; Tingle v. Roston (1825), 3 L. J. O. S. C. P. 100; Garnett v. Ferrand (1827), 6 B. & C. 611; Lucas v. Nockells (1833), 10 Bing. 167; Bristol Grdn's. v. Wait (1834), 1 Ad. & El. 264; Daniell v. Phillips (1835), 1 Cr. M. & R. 662; Ridgway v. Hungerford Market Co. (1835), 4 Nev. & M. K. B. 797; Baillie v. Kell (1838), 4 Bing. N. C. 638; R. v. Thomas (1838), 3 Ad. & El. 183; *Ex p.* Bartlett (1843), 7 Jur. 609; Lindsay v. Leigh (1848), 12 Jur. 280; R. v. Hallett (1851), 5 Cox. C. C. 238; *Ex p.* Napton Overseers (1856), 20 J. P. 581; Hooper v. Lane (1857), 6 H. L. Cas. 443; Phillips v. Whitson (1860), 2 E. & E. 804; *Ex p.* Fernandez (1861), 9 W. R. 832; R. v. Saddlers' Co. (1863), 10 H. L. Cas. 404; Grimwood v. Moss (1872), L. R. 7 C. P. 360; Serjeant v. Nash (1903), 89 L. T. 112.

SECT. 7.—EXERCISE OF JURISDICTION.

86. How court should exercise—Great forbearance.]—(1) The ct. will exercise its power of committing for contempt with great forbearance, but, if persistently set at defiance, will make an order of committal.

(2) It is sufficient if the offending party has notice of the order disobeyed, by whatever means such notice may be given.

As deft. was in ct. when the order was made, that

was sufficient (MALINS, V.C.).—HEYWOOD v. WAIT (1869), 18 W. R. 205.

Annotation:—Mentd. Re Bishop, *Ex p.* Langley, *Ex p.* Smith (1879), 13 Ch. D. 110.

87. —.]—GREENWOOD v. LEATHER-SHOE WHEEL CO., LTD. (1898), 14 T. L. R. 241.

88. Punishment commensurate with offence.] *Re* DAVIES, No. 98, *post*.

89. —.]—Scrupulous care.]—SEAWARD v. PATERSON, No. 22, *ante*.

90. —.]—R. v. GRAY, No. 166, *post*.

91. When exercised—To preserve proceedings from misrepresentation.]—*Re* READ & HUGGONSON, No. 1, *ante*.

92. —.]—Not when less arbitrary remedy available.]—This jurisdiction of committing for contempt being practically arbitrary & unlimited should be most jealously & carefully watched, & exercised, if I may say so, with the greatest reluctance & the greatest anxiety on the part of judges to see whether there is no other mode which is not open to the objection of arbitrariness & which can be brought to bear upon the subject. I say that a judge should be most careful to see that the cause cannot be fairly prosecuted to a hearing unless this extreme mode of dealing with persons brought before him on accusations of contempt should be adopted. I have myself had on many occasions to consider this jurisdiction, & I have always thought that, necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found. Probably that will be discovered after consideration to be the true measure of the exercise of the jurisdiction (JESSEL, M.R.).—*Re* CLEMENTS & COSTA RICA REPUBLIC v. ERLANGER (1877), 46 L. J. Ch. 375; *sub nom.* COSTA RICA REPUBLIC v. ERLANGER, 36 L. T. 332, C. A.

Annotations:—Apprvd. Robertson v. Labouchere (1878), 42 J. P. 710. *Consd.* *Re* DAVIES (1888), 21 Q. B. D. 236. *Apld.* Hunt v. Clarke (1889), 58 L. J. Q. B. 490; *Re* New Gold Coast Exploration Co., [1901] 1 Ch. 860. *Refd.* R. v. Payne, [1896] 1 Q. B. 577; R. v. DAVIES, [1906] 1 K. B. 32.

93. —.]—GREENWOOD v. LEATHER-SHOE WHEEL CO., LTD. (1898), 14 T. L. R. 241.

94. —.]—Not where offence of slight or trifling nature.]—HUNT v. CLARKE, No. 200, *post*.

95. —.]—Only where real attempt to interfere with course of justice.]—SUTHERLAND v. SUTHERLAND (1893), *Times*, Apr. 19.

96. —.]—*Re* HOOLEY, *Ex p.* HOOLEY, No. 211, *post*.

PART III. SECT. 7.

p. When exercised—General rule.]—The power of a ct. of justice to punish for contempt the publishers of defamatory writings concerning accused persons or concerning parties to civil actions is only exercised in cases pending in the ct. itself, or of which the ct. was seized at the time of publication & each ct. according to its powers defends its own prerogative, & does not extend its protection to other cts. even though inferior & not cts. of record.—*Re* SYME, *Ex p.* WORTHINGTON (1902), V. L. R. 652.—AUS.

92 i. —.]—Not when less arbitrary remedy available.]—If there is no pressing necessity for prompt punishment of contempt of ct., the case may well be left to the ordinary tribunals of the country for the summary power will not be exercised unless there is an absolute necessity for so doing.—*Re* SYME, *Ex p.* DAILY TELEGRAPH NEWSPAPER CO., LTD. (1879), 5 V. L. R. 291.—AUS.

94 i. —.]—Not where offence of slight or trifling nature—Constructive contempt.]—A ct. will not exercise the power of committing for constructive contempt where the offence is of a trifling nature.—STODDART v. PRENTICE (1898), 6 B. C. R. 308.—CAN.

95 i. —.]—Only where :eal attempt to interfere with course of justice—Constructive contempt.]—A ct. will commit for constructive contempt only when necessary to prevent interference with the course of justice.—STODDART v. PRENTICE (1898), 6 B. C. R. 308.—CAN.

95 ii. —.]—To justify recourse to the arbitrary, unlimited & uncontrolled power to take summary proceedings in cases of criminal contempt of ct., it is not enough that there should be a technical contempt of ct.; & where there is no real prejudice created to the administration of justice or no real case made for the interference of the ct., the ct. should not take summary proceedings in con-

tempt.—LEGAL REMEMBRANCER v. MATILAL GHOSH (1913), 1 L. R. 41 Calc. 173.—IND.

95 iii. —.]—Counsel for deft. published in a newspaper what purported to be a report of proceedings in ct. This report was exaggerated, incorrect & injurious, & contained unjustifiable imputations upon *pltf.* A motion was made to attach counsel for contempt of ct.—*Held:* though the publication might be libellous, yet the ct., not being satisfied that it was calculated to obstruct the free course of justice, ought not to commit him for contempt.—BIRCH v. WALSH (1846), 10 L. Eq. R. 93.—IR.

q. —.]—Where contempt is of an inferior court.]—In case of contempt of an inferior ct. the Supreme Ct., unless important facts are in dispute, will as a general rule exercise its jurisdiction to punish for such contempt summarily.—A-G v. CROCKETT (1911), T. P. D. 893.—S. AF.

Part IV.—Criminal Contempt.

SECT. 1.—IN GENERAL.

97. Nature of offence.—After an applica on had been disposed of by the judge in chambers, applt., a solr., when he had left the judge's chambers & was on his way to the entrance gate of the building, used insulting language towards the solr. on the other side, & almost if not actually assaulted him:—*Held*: applt. had been guilty of a contempt of the ct., inasmuch as the insults were a gross interference with the administration of justice, & the judge sitting in ct. had power to commit him to prison for such contempt.

It is not necessary to constitute a contempt of ct. that the contempt should be in ct., or that it should be a contempt of a judge sitting in ct. All that is necessary is that it should be a contemptuous interference with judicial proceedings in which the judge is acting as a judicial officer (LORD ESHER, M.R.).

The law has armed the High Ct. of Justice with the power & imposed on it the duty of preventing *brevi manu*. & by summary proceedings any attempt to interfere with the administration of justice. It is on that ground, & not on any exaggerated notion of the dignity of individuals, that insults to judges are not allowed. It is on the same ground that insults to witnesses or to jurymen are not allowed. The principle is that those who have duties to discharge in a ct. of justice are protected by the law, & shielded on their way to the discharge of such duties, while discharging them, & on their return therefrom, in order that such persons may safely have resort to cts. of justice (BOWEN, L.J.).—*Re JOHNSON* (1887), 20 Q. B. D. 68; 57 L. J. Q. B. 1; 58 L. T. 160; 52 J. P. 230; 36 W. R. 51; 4 T. L. R. 40, C. A.

98. —.]—(1) Deft. was in custody for contempt of ct. under the following circumstances. In 1877, she had brought an action for the recovery of some houses which she supposed to be her property. It was decided that she had no title, but between this date & 1886 she continued to assert her claim by legal proceedings, & attempted to take forcible possession of the premises. In 1885 an injunction was obtained by pltf. restraining deft. & her agents from further molesting the owner & tenants of the estate; but she, notwithstanding, again endeavoured to take possession, & was in consequence, in Dec. 1886, imprisoned for contempt of ct. She was informed when sent to prison that if she would undertake to abandon her claim & to abstain from further efforts to take possession of the premises, she would be released. She refused to give this undertaking, & in consequence remained in custody till June, 1888:—*Held*: deft. might be discharged from custody on the terms of an order, which had been assented to

by the counsel for the pltf., & which was read in her presence, which were, *inter alia*, that deft. should not be allowed to issue any writ or summons, or make any application or motion without the leave of a judge at chambers, & that, should notice of any application or motion be given without such leave, the official solr. might be informed by letter, & resp. should not be required to appear unless the ct. should otherwise order.

(2) Where the contempt for which punishment is inflicted is the doing of an act prohibited by an order of the ct., where, what has been done by the offender cannot be undone, it is not advisable that an order for committal should be so framed as to permit the possibility of the lamentable consequences to prisoner which have followed upon the sentence in this case. It should be borne in mind that contempt of ct. is a criminal offence, punishable as a misdemeanour by fine or imprisonment or both. The punishment should be commensurate with the offence. It may be severe where the contempt is grave, as for instance in the rare cases where an insult is offered in ct. to the judge who presides, or where a deliberate attempt is made to interfere with the due & ordinary methods of carrying out the law, as in the cases of *R. v. Castro*, *Onslow's & Whalley's Case*, [No. 241, *post*] & *R. v. Castro*, *Skipworth's Case*, [No. 163, *post*]. So where a witness refuses to give evidence in obedience to a *subpoena*, he may be committed for contempt. The commitment in such cases is described by Willes, J. [in *Ex p. Fernandez*, No. 894, *post*] as a sentence upon a summary conviction for an offence against the law, & in the view of that very learned judge a commitment for a time certain is a correct, "if not the only correct course." A commitment until the offender consented to give evidence, would not, in my judgment, be the proper order to make. On the other hand, where it appears that the act done is due to a mistaken view of the rights of the offender, the punishment, where imprisonment is deemed necessary, should be for a definite period & should not be severe (MATHEW, J.).—*Re DAVIES* (1888), 21 Q. B. D. 236; 37 W. R. 57.

Annotation:—*As to* (2) *Reid*. *Lacon v. De Groat* (1893), 10 T. L. R. 24.

Distinguished from non-criminal contempt.—*See* Part II., *ante*.

SECT. 2.—CONTEMPT IN FACE OF COURT.

SUB-SECT. 1.—MISCONDUCT SEDENTE CURIA.

99. In general.—*Re JOHNSON*, No. 97, *ante*.

100. In court—Assault.—*DAVIS'S CASE* (1560), 2 Dyer, 188 b; 73 E. R. 415.

PART IV. SECT. 1.

97 i. Nature of offence—Interference with due administration of justice.—An application by one party to a suit or action to attach another for contempt of ct. in interfering with the due administration of justice, is an application in respect of a criminal offence, & is not a proceeding in the suit.—*JONES v. JONES* (1898), 19 N. S. W. L. R. 43.—*AUS.*

97 ii. —.]—Interfering with the due administration of justice may be summarily punished as a contempt of ct., or it may form the subject of

an indictment.—*R. v. FOYE* (1893), 2 Buch. A. C. 122.—*S. AF.*

97 iii. —.]—*R. v. KAPLAN* (1893), 10 S. C. 259.—*S. AF.*

r. Necessity of *dolus malus*.—*Dolus malus* is essential to the crime of contempt of ct. When an act is done with the intention of defeating the ends of justice or of obstructing the ct. in its functions there is *dolus* & the act is punishable as contempt of ct., whether or not, an order of ct. is in existence which is being disobeyed or defied.—*YAMOMOTO v. ATHERSACH* (1919), W. L. D. 105.—*S. AF.*

PART IV. SECT. 2, SUB-SECT. 1.

99 i. In general.—Misconduct in the presence of the ct. which shows disrespect of its authority & which obstructs & has a tendency to interfere with the due administration of justice is contempt. The principle is not limited to misconduct in the judge's presence; the ct. is deemed to be present in every part of the place set apart for its use & for the use of its officers, jurors & witnesses & therefore misbehaviour in such places is misconduct in the ct.'s presence.—*Re HASIK LAL NAG* (1917), 1 L. R. 44 Calc. 639.—*IND.*

188 b, n.; 73 E. R. 416.

102. ———.]—**SAVEL & WORTHLEY'S (LORD) CASE** (1626), 2 Dyer, 188 b, n.; Poph. 207; 73 E. R. 415.

103. ———.]—**BALLINGHAM'S CASE** (1605), 2 Dyer, 188 b, n.; 73 E. R. 415.

104. ———.]—**Contemptuous behaviour.**—A contemptuous carriage to a magistrate is a breach of good behaviour, & he to whom such affront is offered may bind the party offending to his good behaviour; or if he has no sureties commit him till he find some. So in this ct. if a witness will be insolent, we may commit him for the immediate contempt or bind him to good behaviour (*HOLT, C.J.*).—*R. v. ROGERS* (1702), *Holt*, K. B. 331; 2 *Ld. Raym.* 777; 7 *Mod. Rep.* 28; 2 *Salk.* 425; 90 E. R. 1083.

105. ———.]—**CARUS WILSON'S CASE**, No. 6, *ante*.

Insults to judges.—See Sub-sect. 2, *post*.

— **Abusing, assaulting or threatening parties connected with proceedings.**—See Sub-sect. 3, *post*.

— **Refusal of witnesses to be sworn or to answer questions.**—See **EVIDENCE**.

— **Destruction or removal of evidence.**—See Sub-sect. 9, *post*.

— **Interruptions or disturbances by public.**—See Sub-sect. 8, *post*.

106. **In court precincts—Assault.**—**GERLING'S CASE** (1567), cited in 12 *Co. Rep.* 71; 77 E. R. 1349.

Annotation :—*Refd.* *Oldfield's Case* (1610), 12 *Co. Rep.* 71.

107. ———.]—*C.* drew his sword upon the stairs of the Ct. of Requests, which is out of sight of any of the cts. :—*Held* : if his indictment had been well drawn, he ought to have been punished.

—**CAUNES' CASE** (1579), 2 Dyer, 188 b, n.; 73 E. R. 416.

108. ———.]—*O.* came out of the Ct. of the Duchy, & before he came into Westminster Hall stabbed a justice of the peace, of which he died :—*Held* : *O.* should not be punished, for it ought to have been in the Hall of Westminster *sedentibus curiis*.—**OLDFIELD'S CASE** (1610), 12 *Co. Rep.* 71; 77 E. R. 1349.

109. ———.]—An assault & affray in the palace yard near Westminster Hall when the cts. are sitting, though out of their view may be punished by indictment, fine & imprisonment.—**WALLER'S CASE** (1634), *Cro. Car.* 373; 79 E. R. 926.

Annotation :—*Mentd.* *Harwood's Case* (1672), 1 *Mod. Rep.* 79.

110. ———.]—A witness in a prosecution, tried at the K. B. sittings, struck *deft.* after the trial was over as both were in the lobby of the ct. The witness was brought into ct. in custody, & evidence given of these facts :—*Held* : he would be committed to the custody of the marshal for three days for this contempt of the ct.—*R. v. WIGLEY* (1835), 7 *O. & P.* 4, N. P.

Annotation :—*Mentd.* *Gilpin v. Cohen & Benjamin* (1869), 19 *L. T.* 830.

111. ———.]—*Ex p.* **WILTON**, No. 701, *post*.

112. ———.]—**Arrest.**—It is a contempt to make an arrest in Palace Yard *sedente curia*.—**LONG'S CASE** (1677), 2 *Mod. Rep.* 181; 86 E. R. 1012.

113. ———.]—*Re* **JOHNSON**, No. 97, *ante*.

114. **In registrar's office.**—The ct. will commit

a party guilty of an act of violence in the register's office, as a contempt.—*Ex p.* **BURROWS** (1803), 8 *Ves.* 535; 32 E. R. 462.

115. **Evidence as to place of assault.**—**KIRBY WEBB** (1887), 3 *T. L. R.* 763.

SUB-SECT. 2.—INSULTS TO JUDGES.

116. **Assault.**—*R.*, Chief Justice of the C. B., was assaulted at the assizes at S. by a prisoner condemned there for felony, & the prisoner was immediately indicted & punished for the assault.—**ANON.** (1631), 2 Dyer, 188 b, n.; 73 E. R. 416.

117. ———.]—*Re* **COSGRAVE** (1877), *Seton's Judgments & Orders*, 7th ed. 457.

118. ———.]—**ANON.** (1923), 58 *L. Jo.* 166.

119. ———.]—**At private house or chambers.**—*R. v. ALMON*, No. 2, *ante*.

120. **Abuse.**—*Debt* lies for a fine by the steward of a lect for a contempt to him while in the duties of his office, *deft.* having said, when the steward told him he ought to be sworn, "in saying so thou liest."—**LINCOLN (EARL) v. FYSHER** (1597), *Cro. Eliz.* 581; *Moore*, K. B. 470; *Owen*, 113; 78 E. R. 824.

121. ———.]—**HUTTON v. HARRISON** (1638), *Hut.* 131; 123 E. R. 1151.

Annotation :—*Refd.* *R. v. WRIGHTSON* (1708), 2 *Salk.* 698.

122. **Accusation of oppression.**—**REDDING'S CASE** (1680), cited in *T. Raym.* 376.

SUB-SECT. 3.—ABUSING, ASSAULTING OR THREATENING PERSONS CONNECTED WITH THE PROCEEDINGS.

123. **Assaulting—Jurors.**—*C.* & others followed jurors to the gate of the palace at Westminster & there assaulted them :—*Held* : *C.* should be committed.—**CARLTON'S CASE** (1345), 2 Dyer, 188 b; 73 E. R. 416.

124. **Threatening—Witnesses.**—**ROWLAND v. SAMUEL** (1847), 9 *L. T. O. S.* 280.

125. ———.]—**Fellow prisoner.**—*R. v. CRADDOCK* (1875), *Times*, Mar. 18.

126. **Abusing—Jurors—By barrister.**—(1) Every ct. of record has attached to its jurisdiction, as inherent in it, the power to punish for contempt, but if the ct. is one of inferior jurisdiction, as a ct. of quarter sessions, the Ct. of Q. B. has authority to intervene & prevent any usurpation of jurisdiction by it, & if it treats conduct as a contempt which there is no reasonable ground for so treating, may interfere to protect the party upon whom the power to commit or fine for contempt has been improperly exercised.

(2) Counsel has a right to, & may with propriety complain of the appearance of partiality on the part of any of the jurymen, but to do so in violent & abusive language, or in a violent manner & for the purpose of insult, & in spite of admonition from the ct., is a contempt.

(3) The maxim is that each ct. of record must necessarily be the best judge of what amounts, under the circumstances, to a contempt of itself.—*Ex p.* **PATER** (1861), 5 *B. & S.* 299; 4 *New Rep.* 147; 33 *L. J. M. C.* 142; 10 *L. T.* 376; 28 *J. P.* 612; 10 *Jur. N. S.* 972; 9 *Cox. C. C.* 544; 122

1041. **In court—Contemptuous behaviour.**—If words, which ostensibly are spoken as advocate, witness or party, in reality are used with another intention for the purpose of vilifying

an individual or the ct., the ct. will take notice of it as a contempt. The contempt is committed the moment the opprobrious words have been used, & the party using them need

not be cautioned by the ct. or ordered to desist from such language.—*Ex p.* **TANNER** (1889), *Crimes (Ireland) Act Cases* 343.—*IR.*

Sect. 2.—Contempt in face of court: Sub-sects. 3, 4, 5, 6, 7, 8, 9 & 10. Sect. 3: Sub-sect. 1.]

E. R. 842; sub nom. R. v. MIDDLESEX JJ., Re PATER, 12 W. R. 823.

Annotations:—As to (1) Refd. Ex p. Jolliffe (1873), 42 L. J. Q. B. 121; Re Rea (1879), 14 Cox, C. C. 256; R. v. Jordan (1888), 36 W. R. 797. As to (3) Refd. Ex p. Jolliffe (1873), 42 L. J. Q. B. 121; R. v. Jordan (1888), 36 W. R. 797.

127. — Witnesses.] — BOSTON BOROUGH CASE (1874), 2 O'M. & H. 161.

Annotations:—Mentd. St. George's Division Case (1895), 5 O'M. & H. 89; Nottingham Borough (Eastern Division) Case (1911), 6 O'M. & H. 292.

SUB-SECT. 4.—BY WITNESSES.

Refusal to be sworn.]—See EVIDENCE.

Refusal to answer questions.]—See, generally, EVIDENCE.

— On ground of professional privilege.]—See, generally, EVIDENCE, & particular Titles *passim*.

Prevarication by witness.]—See EVIDENCE.

SUB-SECT. 5.—REMAINING IN COURT IN DISOBEDIENCE TO ORDER OF JUDGE.

Disobedience to orders of court as contempt in procedure.]—See Part V., Sects. 1, 2, *post*.

128. Witnesses.]—SKELTON v. CASTLE (1837), 6 J. P. 154, n., N. P.

129. —.]—Where witnesses in a cause are ordered out of ct., & in violation of the order one of them returns before he is duly called, his testimony on that account ought not to be rejected, but the witness may be punished by fine or imprisonment.—ROBERTS v. GARRATT (1842), 6 J. P. 154, N. P.

130. —.]—Where a witness remains in ct. after an order that the witnesses shall leave the ct. his testimony cannot, on that ground, be excluded, though he may be committed for contempt.—CHANDLER v. HORNE (1842), 2 Mood. & R. 423, N. P.

Annotation:—Mentd. Fortescue v. Clayton (1860), 24 J. P. 712.

131. Counsel—Hearing in camera with consent of parties.]—MALAN v. YOUNG (1889), 58 J. P. 822; 6 T. L. R. 38.

Annotations:—Refd. Scott v. Scott, [1912] P. 241. Mentd. Re Martindale, [1894] 3 Ch. 193; Druce v. Druce, Druce v. Druce & Gibb (1903), 72 L. J. P. 51; Scott v. Scott, [1913] A. C. 417.

Right of public to admission.]—See COURTS, p. 128, *post*.

SUB-SECT. 6.—CHALLENGING THE ARRAY.

See, generally, JURIES.

132. After rule of court ordering jury to be struck.]—A party entered into a rule that the master should name 48 for a special jury, each party strike out 12 & the sheriff return the other 24, & the jury were struck & returned accordingly:—Held:** it was contempt for the party to challenge the array, though he might challenge the polls, & an attachment would be granted against him for it.—**R. v. BURIDGE (1724), 2 Ld. Raym. 1364; 8 Mod. Rep. 245; 1 Stra. 593; 92 E. R. 389.****

Annotations:—Distd. R. v. Johnson (1734), Cunn. 110. Mentd. R. v. Edwards (1767), 4 Burr. 2105; R. v. Edmonds (1821), 4 B. & Ald. 471.

PART IV. SECT. 2, SUB-SECT. 5.

128 i. Witnesses.]—SADLER v. SMITH (1880), 14 C. L. J. N. S. 30.—CAN.

128 ii. —.]—Where, after all witnesses have been ordered out of ct., one remains, he is liable to punishment for

contempt but his evidence cannot be excluded.—R. v. KELLER (1915), App. D. 98.—S. AF.

PART IV. SECT. 2, SUB-SECT. 8.

a. Carrying on noisy trade—In

133. —.]—Defts. in an information in the nature of a *quo warranto* obtained the common rule for a special jury, which was drawn up as usual, for the sheriff to attend with the freeholders' book, & that he should return the 24 struck by the master. The prosecutor took out the venire to the sheriff of C., & the deft. challenged the array, on account of an interest the sheriff had, as being a freeman of C., whose rights were to be tried. It was moved, that an attachment might issue against defts. as for a contempt in challenging contrary to the rule of ct.:—Held:** there was no sort of contempt committed by deft. & the rule would be discharged.—**R. v. JOHNSON (1731), 2 Stra. 1000; Cunn. 110; 93 E. R. 995.****

Annotations:—Mentd. R. v. Amery (1786), 1 Term Rep. 363; R. v. Edmonds (1821), 4 B. & Ald. 471.

SUB-SECT. 7.—IMPERSONATING JURYMEN.

See, generally, JURIES.

134. General rule.]—It is an interference with the course of justice & a contempt of ct. to personate a jurymen & to act in his stead.—R. v. LEVY (1916), 32 T. L. R. 238, D. C.****

Annotation:—Refd. R. v. Wakefield (1918), 34 T. L. R. 210.

135. Indictable misdemeanour—Right of action against offender.]—Where a stranger who is not one of the jury is sworn in the name of one of the jury the verdict of the jury is good, but the stranger may be indicted for a misdemeanour. *Seemle:* the parties may have an action on the case against him.—ANON. (1612), March, 81, pl. 132; 82 E. R. 121.****

136. Juror acting by mistake for another—Similarity in names.]—Richard Geater summoned & returned as a *nisi prius* juror, did not attend the assizes, but one Richard Sheppard a freeholder, who was verbally summoned to serve as a juror on the Crown side, & never had been at the assizes before, attended both cts., as he imagined himself in duty bound to do, & when Richard Geater was called on the *nisi prius* side, Richard Sheppard, thinking himself called, answered & was sworn as a juror. A rule was made on Richard Sheppard to show cause why an attachment, etc., also a rule to show cause why the verdict should not be set aside:—Held:** the former rule would be discharged & the latter rule made absolute.—**NOEMAN v. BEAUMONT (1744), Barnes, 153; Willes, 481; 94 E. R. 1000.****

Annotations:—Refd. R. v. Mellor (1858), 7 Cox, C. C. 454. Mentd. Wray v. Thorn (1744), Willes, 488; Dovey v. Hobson (1816), 2 Marsh. 154.

SUB-SECT. 8.—UNLAWFUL INTERRUPTIONS OR DISTURBANCES OF COURT.

137. Disturbance after verdict found.]—After the jury had returned a verdict of guilty a great shout was given, at which the ct. being offended, one person who was observed by the crier to be particularly concerned in the shout, was committed to gaol for that night, but the next morning having received a public reproof, was discharged without fees.—R. v. COLLEDGE (1681), 8 State Tr. 549.****

138. —.]—After a jury had retired they returned & found prisoner not guilty. On this

vicinity of court—After order to desist.]—Carrying on a noisy trade in neighbourhood of the ct., so as to obstruct proceedings of the ct. after service of an order by presiding judge to desist, is a contempt of ct.—Re DAKIN (1887), 13 V. L. R. 522.—AUS.****

there was a considerable shout, & a man jumped up in the middle of the ct., waved his hat & shouted:—*Held*: he would be taken into custody & fined.—*R. v. STONE* (1796), 6 Term Rep. 527; 25 State Tr. 1155; 101 E. R. 684.

Annotation:—*Mentd.* *R. v. O'Connell* (1844), 5 State Tr. N. S. 1.

139. Attempt at rescue—By creating a disturbance in court.—[Certain persons were proceeded against by information at the instance of the A.-G. charging them with riot & an endeavour in open ct. before His Majesty's justices of oyer & terminer to rescue one A. out of the custody of the sheriff, in which he had been detained during & after a trial for high treason, with the intent that he might go at large. They were alleged to have called out to the prisoner "Spring" & to have put the lights out & otherwise created a disturbance besides interrupting & obstructing the justices in the lawful & peaceable holding of their ct.:—*Held*: the prisoners had been guilty of a misdemeanour.—*R. v. THANET (MARL)* (1799), 27 State Tr. 821.

Annotation:—*Mentd.* *Cobbett v. Hudson* (1852), 17 Jur. 488.

140. Interruption of proceedings.—[A. interrupted & disturbed the proceedings of the ct. during the sittings, & the ct. thereupon committed him for contempt.—*BRUCE'S CASE* (1828), *Sanders' Chancery Orders*, 736, L. C.

141. — By applause.—[*FOX v. WHEATLEY* (1893), *Oswald on Contempt*, 3rd Ed., 53.

142. High sheriff addressing grand jury—After prohibition by judge.—[While the judge is sitting under commission of assize the high sheriff has no right to address the grand jury, & his doing so against the prohibition of the judge is a contempt of ct.—*Re SURREY (SHERIFF)* (1860), 2 F. & F. 234.

SUB-SECT. 9.—DESTRUCTION OR REMOVAL OF EVIDENCE.

See, generally, EVIDENCE.

143. Removal of documentary evidence by retiring jurors—Without leave of court—Or consent of parties.—[(1) It is a contempt to circulate papers relative to the merits of a cause upon the eve of its trial, but not a sufficient ground to set aside a verdict, though for the Crown upon a criminal prosecution, unless the circulation can be fixed upon the prosecutor.

(2) It is a contempt in the jury to take any

evidence with them upon retiring from the Bar without either the leave of the ct. or consent of the parties.—*R. v. BURDETT* (1897), 1 Ld. Raym. 148; 2 Salk. 645; 91 E. R. 996.

Annotations:—*Generally, Mentd.* *Northampton Corpn. v. Ward* (1745), 2 Stra. 1238; *R. v. Gillham* (1795), 6 Term Rep. 265; *Draper v. Sperring* (1861), 10 C. B. N. S. 113; *A.-G. v. Tynemouth Corpn.* (1900), 17 T. L. R. 77.

144. Destruction of document in custody of court.—[*SUTHERLAND v. SUTHERLAND* (1893), *Times*, Apr. 19.

SUB-SECT. 10.—OTHER CASES.

145. Party leaving court without permission—During examination on interrogatories.—[Deft. was examined upon interrogatories, upon the breach of an order of this ct., & departed without licence:—*Held*: an attachment would be awarded.—*BOYLE v. VIVEAN* (1579), *Cary*, 104; 21 E. R. 55.

146. Using words opprobrious or irrelevant to case.—[Neither party, witness, counsel, jury or judge, can be put to answer, civilly or criminally, for words spoken in office. If words spoken are opprobrious or irrelevant to the case, the ct. will take notice of them as a contempt, & examine on information. If any thing of *malu mens* is found on such inquiry, it will be punished suitably (*LORD MANSFIELD, C.J.*).—*R. v. SKINNER* (1772), *Lofft*, 51; 98 E. R. 529.

Annotations:—*Mentd.* *Dawkins v. Rokeby* (1873), L. R. 8 Q. B. 255; *Seaman v. Netherclift* (1876), 1 Q. P. D. 540; *Munster v. Lamb* (1883), 11 Q. B. D. 588; *Copartnership Farms v. Hurvey-Smith*, [1918] 2 K. B. 405.

147. Embracery.—[*It. v. BAKER* (1891), 113 C. C. Ct. Cas. 374, 589.

See, further, CRIMINAL LAW & PROCEDURE.

SECT. 3.—SPEECHES, WRITINGS AND ACTS TENDING TO DEFEAT THE ENDS OF JUSTICE.

SUB-SECT. 1.—PRIVATE COMMUNICATIONS TO JUDGES AND OTHER OFFICIALS.

Insults to judges in face of court.—*See* Sect. 2, sub-sect. 2, *ante*.

148. General rule.—[Every private communication to a judge for the purpose of influencing his decision upon a matter publicly before him, always is, & ought to be, reprobated; it is a course calculated, if tolerated, to divert the course of

PART IV. SECT. 2, SUB-SECT. 9.

t. Destruction of documentary evidence.—[A telegraph operator was examined as a witness, & was asked to produce the originals of telegrams. The witness stated that he had burnt the telegrams in question with others after being subpoenaed, & while the trial was actually going on, upon instructions received by telegraph from the general manager of the telegraph company in whose service he was; that these telegrams, with others should have been destroyed before, in accordance with a standard rule of the company, but that he had neglected to do so at the proper time:—*Held*: the documents were in existence at the beginning of the trial; during the trial they were destroyed by the deliberate action of the general manager, whereby the ct. was hindered & the manager & operator were guilty of a contempt of ct.—*Re DWIGHT & MACKLAM* (1887), 15 O. R. 148.—*CAN.*

143 i. Removal of documentary evidence.—[A document in *manibus curiae* having been carried away by an agent regardless of the judge's remonstrances:—*Held*: a process caption was a

proper remedy, & that notice of its issue was unnecessary.—*WATT v. LIGERTWOOD* (1874), L. R. 2 Sc. & Div. 361.—*SCOT.*

PART IV. SECT. 2, SUB-SECT. 10.

a. Removing counsel's brief.—[The brief of the party in the cause being clandestinely taken out of the chambers of his attorney, & made an improper use of by the opposite party, the ct. ordered the brief to be returned, & granted an attachment, not only against the person who obtained it, but also against those who had made use of it.—*BATEMAN v. CONWAY* (1753), 1 Bro. Parl. Cas. 519.—*IR.*

PART IV. SECT. 3, SUB-SECT. 1.

148 i. General rule.—[It is contrary to the practice of all cts. of justice, unfair to an adversary, & a contempt of ct. for a suitor, under any pretext whatever, to communicate with a judge, except by public proceedings in open ct., respecting the merits of any case in which he is interested, & which is either pending in the ct. of such judge or likely to come before him.—*TAYLER v. ASMEDEH KOONWAR* (1866), 4 W. R. 86.—*IND.*

b. Imputing gross misconduct to judge.—[A barrister & attorney in the Supreme Ct. of N. S., & a private suitor in several cases brought before such ct., wrote a letter of the most reprehensible kind to the Chief Justice, imputing to him gross misconduct in his office:—*Held*: the writing of the letter was a contempt of ct., & the appropriate punishment for such offence was fine & imprisonment.—*Re WALLACE* (1866), L. R. 1 P. C. 283.—*CAN.*

c. —.—[A writer to the signet, wrote & transmitted to the Lord President of the Ct. of Session a letter reflecting on his judicial conduct, containing a matter disrespectful & insulting to the ct., & injurious to the administration of justice:—*Held*: he had been guilty of a high offence against the dignity of the ct., & which tended to prejudice & to slander the due administration of justice therein.—*LORD ADVOCATE v. JAMIESON* (1822), 1 Sh. (Ct. of Sess.) 285.—*SCOT.*

d. Sending message to judge at his private house to ask for explanation of language used by him while sitting.—[A barrister, offended by the use of a strong expression on the part of a

Sect. 3.—Speeches, writings and acts tending to defeat the ends of justice: Sub-sects. 1 & 2.]

justice, & is considered, & ought more frequently than it is, to be treated as, what it really is, a high contempt of ct. (LORD COTTENHAM, C.).—*Re DYCE SOMBRE* (1849), 1 Mac. & G. 116; 1 H. & Tw. 285; 41 E. R. 1207, L. C.

Annotation:—*Mentd. Re Blackmore* (1862), 1 Do G. J. & Sm. 84.

149. Offer of bribe to judge.]—The Lord Chancellor took notice in open ct. that he had received a letter by post, directed to the Chancellor of England, dated Yarmouth, in Norfolk, Aug. 1, 1747, signed T. M., making mention of a bill in Ch. threatened to be filed against T. M. & relating to the subject-matter of such suit, & enclosing a bank note for £20, which he desired his Lordship's acceptance of. The letter & bank note, & also an affidavit proving the letter to be the proper handwriting of T. M., being read:—*Held*: the contents of the letter & the sending thereof, with the bank bill enclosed, to his Lordship, was a great misbehaviour in T. M., & a contempt of ct.—*MARTIN'S CASE* (1747), 2 Russ. & M. 674; 39 E. R. 551, L. C.

Annotations:—*Consd. Re Ludlow Charities, Charlton's Case* (1837), 2 My. & Cr. 316. *Refd. R. v. Barnardo* (1889), 23 Q. B. D. 305. *Mentd. Re Martin, Ex p. Van Sandau* (1844), 1 Ph. 445; *Ex p. Van Sandau* (1846), 1 Ph. 605.

150. Scandalous offer to judge.]—*MACGILL'S CASE* (1748), 2 Fowler's Exchequer Practice, 2nd ed., 404.

Annotation:—*Consd. Re Ludlow Charities, Charlton's Case* (1837), 2 My. & Cr. 316.

151. Letter threatening master.]—*Re LUDLOW CHARITIES, LECHMERE CHARLTON'S CASE*, No. 14, *ante*.

SUB-SECT. 2.—SCANDALISING THE COURT.

Insults to judges in face of court.]—*See* Sect. 2, sub-sect. 2, *ante*.

152. General rule.]—Contempt of ct. may be committed by publication of scandalous matter respecting the ct. after adjudication as well as pending a case before it.

Where applt. was neither printer nor publisher nor writer of such scandalous matter, but had innocently lent the paper containing it to a friend without knowledge of its contents:—*Held*: he was neither constructively nor necessarily guilty of contempt of ct. & the judge who committed him must pay the costs of appeal to Her Majesty in Council.—*MCLEOD v. ST. AUBYN*, [1899] A. C. 549; 68 L. J. P. C. 137; 81 L. T. 158; 48 W. R. 173; 15 T. L. R. 487, P. C.

Annotation:—*Refd. Scott v. Scott*, [1913] A. C. 417.

153. —.]—Where legal proceedings in a ct. have terminated, statements made by the parties to such proceedings stating what in their belief took place at the trial & making comments thereon, cannot be regarded as a contempt of ct. with its resultant penalties. In such a case the ct. will not grant an injunction, unless the statements

amount to scandalising the ct. by making personal attacks on the judge who presided at the trial, or might be considered as interfering with the administration of justice. If the case is entirely ended, the ct. will not further trouble itself in the matter. The jurisdiction of the ct. as to the law of contempt ought not to be enlarged, nor applied to matters outside the well known principles. There is no such kind of contempt of ct. as a misrepresentation of the judgment for the purpose of injuring one of the parties.

Certain members of a trade union brought an action against the officials of the union. After the action was heard & judgment given, plffs. issued & distributed amongst the members of the union a circular containing what defts. alleged to be unfair statements regarding the proceedings at the trial. On a motion for an injunction to restrain plffs. from so injuring defts.:—*Held*: the issue & distribution of the circular by plffs. could not be held to amount to contempt of ct., & the motion must be dismissed with costs.—*DUNN v. BEVAN, BRODIE v. BEVAN*, [1922] 1 Ch. 276; 91 L. J. Ch. 299; 127 L. T. 14; 38 T. L. R. 172.

154. Speaking disrespectfully of judge or court.]—Motion for an attachment against deft. for cursing the chief justice & ct. on service of process:—*Held*: an attachment would be granted absolute, without any rule to show cause, that being the constant method for a contempt of this nature.—*PHILLIPS v. HEDGES* (1736), Cooke, Pr. Cas. 132; 125 E. R. 1004.

155. —.]—Pltf. moved to commit deft. for that when pltf. told him he came to serve him with an order from the Master of the Rolls deft. used language insulting to the Master of the Rolls:—*Held*: an attachment would be ordered. *Semble*: deft. might have been committed.—*WITHAM v. WITHAM* (1669), 3 Rep. Ch. 41; 21 E. R. 723.

156. —.]—An attachment lies for speaking contemptuously of the ct. on being arrested.—*R. v. CROSSE* (1703), 6 Mod. Rep. 43; 87 E. R. 806.

157. —.]—An attachment goes in the first instance, for speaking disrespectful words of the ct.—*R. v. JERMY* (1752), Say. 47; 96 E. R. 799.

158. —.]—If contemptuous words are spoken of the ct. an attachment is to be awarded in the first instance.—*R. v. KENDRICK* (1754), Say. 114; 96 E. R. 822.

159. Reflection on administration of justice—Entry in corporation books.]—An order was made by a corpn., & entered in their books, stating that B. against whom a jury had found a verdict with large damages in an action for a malicious prosecution for perjury, was actuated by motives of public justice, etc. in preferring the indictment:—*Held*: this was a libel reflecting on the administration of justice, for which the ct. would grant an information against the members making that order.—*R. v. WATSON* (1788), 2 Term Rep. 199; 100 E. R. 108.

Annotations:—*Refd. Mill v. Hawker* (1874), L. R. 9 Exch. 309. *Mentd. A.-G. v. Carmarthen Corpn.* (1805), Coop. G. 30.

judge while sitting in ct., sent an officer to the judge's private residence upon a pacific errand to ask for an explanation:—*Held*: the party sending the message & the party conveying it were guilty of contempt of ct.—*Re PITTARD* (1864), 1 Hyde 79.—*IND.*

e. Letter intending to influence judge.]—Deft. wrote a letter to a stipendiary magistrate, intended to influence him with regard to the punishment of pltf.'s wife:—*Held*: the letter was a contempt of ct.—

THOMAS v. NIELD (1911), 30 N. Z. L. R. 1208.—*N.Z.*

PART IV. SECT. 3, SUB-SECT. 2.

152 i. General rule.]—An act done or writing published, calculated to bring a ct. or a judge of the ct. into contempt or to lower his authority, or to obstruct or interfere with due course of justice or the lawful process of the ct., is a contempt of ct.—*Re NARASINHA CHINTAMAN KELKAR* (1908), 1 L. R. 33 Bom. 240.—*IND.*

152 ii. —.]—Any publications or words which tend to bring the administration of justice into contempt amount to a contempt of ct.—*Re PIRLAN* (1877), K. 5.—*S. AF.*

152 iii. —.]—All publications which offend against the dignity of the ct., which scandalise the ct., & which impute to the ct. improper or corrupt motives or conduct are publications which constitute contempt of ct.—*R. v. HARDY* (1906), 27 N. L. R. 206.—*S. AF.*

160. Libel on judge & jury.]—For publishing a libel on a judge & jury in the execution of their duty prisoner was sentenced to imprisonment.—*R. v. HART & WHITE* (1808), 30 State Tr. 1131; *subsequent proceedings*, 10 East, 94.

Annotations:—*Mentd.* Dunn v. R. (1847), 12 Q. B. 1031; Haylock v. Sparke (1853), 1 E. & B. 471; *R. v. Trueman* (1913), 82 L. J. K. 13. 916.

161. Libel on court.]—Petitioner complained of the publication of a case then before the ct. accompanied with reflections on the ct. & the parties:—*Held*: defts. should be committed.—*Re QUICK* (1806), cited in 15 L. J. Bcy. 15.

Annotation:—*Consd.* *Ex p. Van Sandau* (1846), 1 Ph. 605.

162. — When court not sitting.]—C., the publisher of a newspaper in the Isle of Man, was ordered to attend at a Ch. Ct. of the island, for publishing an article tending to defame the ct. He attended accordingly, & tendered an apology which the ct. did not accept, but committed him for contempt. Thereupon C. avowed himself to be the author of the article, & the ct. committed him also to gaol, without a warrant. After some hours the gaoler was furnished with the following warrant, signed by the Lieutenant-Governor:—“At a Ch. Ct. holden etc. Whereas C. voluntarily appeared before this ct. & avowed himself to be the author of an article, etc., & whereas the writing & publishing the said article is a contempt of this ct., it is ordered that C. be, for such contempt, committed a prisoner to gaol, to remain until further order.” A writ of *habeas corpus ad subjiciendum* having been obtained by C., a rule was granted for quashing it, upon affidavits which stated that the Lieutenant-Governor, of the Isle of Man presided in the Ch. Ct., which was a ct. of record, having power to punish for contempt, & that the warrant was in the form usually adopted by that ct.:—*Held*: (1) it sufficiently appeared that the warrant of commitment was an act of the Ch. Ct.; (2) the Ch. Ct. having authority to commit for contempt, & having adjudged the publication to be a contempt, this ct. could not review that adjudication, though the imprisonment was thereby directed to continue “until further order”; (3) a libel reflecting contemptuously on the proceedings of a ct. published when the ct. is not sitting, might be punished by commitment, as well as such contempt when committed in the face of the ct. & whilst it was

sitting; (4) the warrant, being in the form used by the Ch. Ct. of the Isle of Man, was lawful though the commitment was not for a certain time.

By the law of England, no ct. can commit for contempt, by way of punishment, except for a certain time (*PATTESON, J.*).—*Re CRAWFORD* (1849), 13 Q. B. 613; 7 State Tr. N. S. 901; 18 L. J. Q. B. 225; 13 L. T. O. S. 185; 13 J. P. 634; 13 Jur. 955; 116 E. R. 1397.

Annotations:—*As to* (2) *Consd.* *Martin v. Mackonochie* (1879), 4 Q. B. D. 697. *As to* (4) *Refd.* *Ex p. Anderson* (1861), 3 L. T. 622; *Ex p. Brown* (1864), 5 B. & S. 280.

163. Allegation of unfitness of judge.]—(1) It is a contempt of ct., while a criminal charge is pending, to impugn the honesty & impartiality of the judge by whom it is to be tried, or to attempt to obstruct the course of justice by exciting public prejudice against it.

(2) But it is not a contempt merely to solicit subscriptions for the defence of deft. on a criminal charge.—*R. v. CASTRO, SKIPWORTH'S CASE* (1873), L. R. 9 Q. B. 230; 28 L. T. 227; *sub nom.* *R. v. SKIPWORTH, R. v. DE CASTRO*, 12 Cox, C. C. 371; 37 J. P. Jo. 85, D. C.

Annotations:—*As to* (1) *Refd.* *Robertson v. Labouchere* (1878), 42 J. P. 710; *R. v. Parnell* (1880), 14 Cox, C. C. 474; *Re Davies* (1888), 21 Q. B. D. 236; *R. v. Tibbits*, [1902] 1 K. B. 77. *Generally, Mentd.* *Scott v. Scott*, [1913] A. C. 417.

164. —.]—*R. v. CASTRO, ONSLOW'S & WHALLEY'S CASE*, No. 241, *post*.

165. Criticism of conduct of judge—Criticism not calculated to obstruct course of justice.]—*Re BAHAMA ISLANDS, SPECIAL REFERENCE FROM*, No. 19, *ante*.

166. Abuse of judge in his judicial capacity.]—

(1) The publication in a newspaper of an article containing scurrilous personal abuse of a judge, with reference to his conduct as a judge in a judicial proceeding which has terminated, is a contempt of ct. punishable by the ct. on summary process.

(2) This is not a new-fangled jurisdiction; it is a jurisdiction as old as the common law itself, of which it forms part. It is a jurisdiction, the history, purpose, & extent of which are admirably treated in the opinion of Wilmut, J. in *R. v. Almon* [No. 2, *ante*]. It is a jurisdiction, however, to be exercised with scrupulous care, to be exercised only when the case is clear & beyond

160 i. Libel on judge & jury.]—A number of persons were charged with seditious conspiracy, one was tried & found guilty; the trial of the others was to take place, & deft. made a public speech imputing unjustness & unfairness to the judge & jury by whom the one was tried & saying that those still to be tried were not guilty & to try them on the charge was a farce & a travesty:—*Held*: guilty of contempt of ct., for scandalising it.—*Re JEVENS* (1920) 1 W. W. R. 747, 51 D. L. R. 38; 32 Can. Crim. Cas. 358.—CAN.

161 i. Libel on court.]—A newspaper published articles scandalising the High Ct. & the Chief Justice in his administration thereof by allegations implying that the Chief Justice had constituted a packed Bench:—*Held*: the articles constituted a contempt of ct.—*Re MOTT LAL GHOSH* (1917), 1 L. L. 45 Cal. 169.—IND.

1. Criticism of conduct of judge.]—To publish of a judge of the Supreme Ct. that he “has had another opportunity of showing his utter want of judicial impartiality, & from the Bench has delivered once more a bitter & one-sided advocate’s speech” & that “with such a system of judicial advocacy, it is only when the jury are exceptionally intelligent as was

the case yesterday, that anything approaching justice can be expected to result from a trial before the judge” is a contempt of ct.—*Re “EVENING NEWS” NEWSPAPER* (1880), 1 N. S. W. L. R. 211.—AUS.

g. —.]—A judge rendered a decision respecting which deft. published a libellous article in his newspaper:—*Held*: deft. was liable to be committed for contempt of ct. for his libellous publication.—*R. v. ROWE* (1880), *Temp. Wood* 309.—CAN.

h. —.]—It is a contempt of ct. to publish that the decision of the ct. in a case pending before it is a judicial outrage, & a most disgraceful judicial scandal. Any contemptuous remark concerning a judge in a matter in which he is acting judicially, whether it be to insinuate that he had acted dishonestly, or to hold his conduct & decision up to public ridicule, is a contempt of ct.—*Re HAWKE* (1888), 28 N. B. R. 391.—CAN.

k. —.]—A judge sitting in chambers, granted an order nisi for a prohibition. Deft. published that, in granting the order, the judge was actuated by dishonest & corrupt motives:—*Held*: a contempt of ct.—*R. v. ELLIS, Ex p. BAIRD* (1889), 28 N. B. R. 497.—CAN.

l. —.]—To say or suggest in a public newspaper that a judge has been guilty of personal favouritism, & has allowed himself to be influenced by personal & corrupt motives, in deciding a matter in his judicial capacity is a contempt of ct.—*Re PUELAN* (1877), K. 5.—S. AF.

165 i. — Criticism not calculated to obstruct course of justice.]—Statements made concerning a judge of the High Ct. do not constitute a contempt of such ct. unless they are calculated to obstruct or interfere with the course of justice, or with the due administration of the law therein.—*R. v. NICHOLLS* (1911), 12 C. L. R. 280.—AUS.

166 i. Abuse of judge in his judicial capacity.]—A magistrate having given a decision against a litigant, the latter noted appeal & sent to the magistrate & to the Appeal Ct. an affidavit which contained merely a violent attack upon the magistrate as such, couched in most offensive terms, & imputing to him malice, partiality & dishonest perversion of facts in connection with his decision:—*Held*: such conduct constituted a contempt of the magistrate’s ct.—*A. G. v. CROCKETT* (1911), T. P. D. 893.—S. AF.

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reasonable doubt, because, if it is not a case beyond reasonable doubt, the cts. will & ought to leave the A.-G. to proceed by criminal information (LORD RUSSELL, C.J.).—*R. v. GRAY*, [1900] 2 Q. B. 36; 69 L. J. Q. B. 502; 82 L. T. 534; 61 J. P. 484; 48 W. R. 474; 16 T. L. R. 305; 44 Sol. Jo. 362, D. C.

Annotations:—*As to (1) Refd.* Louth North Division Case (1911), 6 O.M. & H. 103; *Scott v. Scott*, [1913] A. C. 417. *As to (2) Refd.* *R. v. Tibbits*, [1902] 1 K. B. 77. *Generally, Mentd.* *R. v. Parke*, *Ex p. Dougal* (1903), 72 L. J. K. B. 839.

167. Comment on conduct of jury—After notice of new trial.—*L.* was deft. in an action for libel, & at the trial the jury found a verdict against him. *L.* thereupon gave notice of motion for a new trial, & meanwhile wrote an article in his newspaper commenting adversely upon the conduct of the jury:—*Held*: such comment did not amount to a contempt of ct.—*DALLAS v. LEDGER*, *Re LEDGER* (1888), 52 J. P. 328; *sub nom. Re ERA NEWSPAPER*, *DALLAS v. LEDGER*, 4 T. L. R. 432, D. C.

168. What amounts to publication of scandalous matter.—*MCLEOD v. ST. AUBYN*, No. 152, *ante*.

SUB-SECT. 3.—PREJUDICING THE PUBLIC DURING PENDENCY OF PROCEEDINGS.

A. Comments Prejudicial to Fair Trial.

(a) In General.

169. General rule—Comments tending to prejudice.—*Re PALL MALL GAZETTE*, *JONES v. FLOWER & HOPKINSON* (1894), 11 T. L. R. 122.

Annotation:—*Refd.* *Bean v. Flower* (1895), 11 T. L. R. 520.

170. — Statement before hearing.—*Re READ & HUGGONSON*, No. 1, *ante*.

— Statement by party to action.—*See* Sub-sect. 3, A. (d), iii., *post*.

171. — Intention to prejudice possible jury-men.—*R. v. GOSSIP* (1909), *Times*, Feb. 18.

172. — Duty of parties to wait till after decision.—*R. v. BARNARDO* (1892), *Times*, Nov. 9.

173. — No distinction between civil & criminal proceedings.—*R. v. ARMSTRONG* (1894), *Times*, May 9.

Annotations:—*Refd.* *R. v. Parke*, [1903] 2 K. B. 432; *R. v. Davies*, [1906] 1 K. B. 32.

174. — Political references—Names of parties omitted.—It is a contempt of ct. for a newspaper to refer to an action pending in any manner that may tend in any degree to interfere with the course of justice, & it cannot be pleaded in excuse either that the reference was only made for political purposes, or that the names of the parties in the action were not mentioned.—*Re HINDE*,

THORNHILL v. STEELE-MORRIS (1911), 56 Sol. Jo. 34.

175. Trial completed before hearing of motion for committal.—The ct. fined the proprietor of a newspaper for contempt of ct. in making comments in his newspaper which tended to prejudice the course of justice, though the trial had taken place before the motion to commit came on for hearing.—*Re LABOUCHERE*, *Ex p. COLUMBUS CO., LTD.* (1901), 17 T. L. R. 578.

176. Prisoner—Committed for trial—Imputation of previous conviction.—*R. v. ARMSTRONG* (1894), *Times*, May 9.

Annotations:—*Refd.* *R. v. Parke*, [1903] 2 K. B. 432; *R. v. Davies*, [1906] 1 K. B. 32.

177. — Anticipation of verdict.—*R. v. BALFOUR*, *Re STEAD* (1895), 11 T. L. R. 492, D. C. **Annotation:—***Mentd.* *R. v. Parke*, [1903] 2 K. B. 432.

178. — Antecedent character of prisoner.—(1) To publish statements which are calculated or tend to prejudice or influence the minds of those who constitute a tribunal which is to try an accused person, is to attempt to pervert the due course of law & justice, & is an indictable offence. It is also a contempt of ct. with which the ct. may deal summarily. The test of the criminality is not the result of the judicial proceedings, for a guilty person is entitled to an impartial trial.

(2) During the course of the trial of two persons for felony the reporter for a certain newspaper sent to the editor articles affecting the conduct & character of the persons under trial which would have been inadmissible in evidence against them. The editor published the articles &, after the conviction & sentence of the two persons, he & the reporter were convicted on an indictment charging them with unlawfully attempting to pervert the course of justice by publishing the articles in question & with conspiring to do so:—*Held*: the conviction must be affirmed.—*R. v. TIBBITS*, [1902] 1 K. B. 77; 71 L. J. K. B. 4; 85 L. T. 521; 66 J. P. 5; 50 W. R. 125; 18 T. L. R. 49; 46 Sol. Jo. 51; 20 Cox, C. C. 70, C. C. R. **Annotation:—***As to (1) Expld. & Apprvd.* *R. v. Nield* (1909), *Times*, Jan. 27.

179. — Not committed for trial—Antecedent character of prisoner.—Where a person has been charged before the petty sessions with an indictable offence triable only at the assizes, & matter is published in a newspaper, relating to the past life of that person, tending to interfere with the fair trial of the charge, the High Ct. has jurisdiction to attach the publisher of such matter for contempt of ct. notwithstanding that at the time of the publication the person charged had not yet been committed for trial.—*R. v. PARKE*, [1903] 2 K. B. 432; 89 L. T. 439; 67 J. P. 421; 52 W. R. 215; 19 T. L. R. 627; *sub nom. R. v.*

PART IV. SECT. 3, SUB-SECT. 3.—A. (a).

169 i General rule.—Comment on a trial when pending is an offence against the administration of justice & a contempt of ct. It makes no difference in principle whether the comments are made in writing or in speeches at public assemblies nor whether they are made with reference to a trial actually commenced & going on or with reference to a trial about to take place.—*Re IVENS* (1920), 1 W. W. R. 747; 51 D. L. R. 38; 32 Can. Crim. Cas. 358.—**CAN.**

m. Aspersions on counsel.—Aspersions in a newspaper cast on counsel for undertaking a defence in a prosecution are a contempt of ct.—*FROMBERG v. HALLE* (1904), T. H. 64.—**S. A. F.**

n. Prisoner—Awaiting trial—Newspaper article & letter.—A letter pub-

lished in a newspaper or an article therein tending to prejudice the public against a prisoner awaiting his trial, is a contempt of ct.—*Ex p. HOVELL* (1869), 8 N. S. W. S. C. R. 163.—**AUS.**

o. ——Any comments in a public newspaper calculated to excite feelings of hostility towards persons who are liable to be tried on a criminal charge, are a contempt of the ct. in which the proceedings are pending.—*R. v. O'DOHERTY* (1848), 5 Cox, C. C. 348.—**IR.**

p. — Statement that prisoner has confessed.—The publication, in newspapers circulating largely in the assize city, of news matter with display headings stating that a person accused of murder, for which he is to be tried at that assize, has confessed his guilt to a police officer, is calculated to prejudice the minds of the jurymen

there assembled against the prisoner and to prevent him from having a fair trial, anticipates the course of justice & may be treated as a contempt of ct., because its tendency is to deprive the ct. of the power of administering justice duly, impartially, & with reference solely to the facts judicially brought before it.—*R. v. WILLIS & POPE* (1913), 23 W. L. R. 702; 4 W. W. R. 761; 9 D. L. R. 646.—**CAN.**

q. — Not yet committed—Alleged confession.—It is contempt of ct. to publish in a newspaper that a person, who at the time of such publication has been arrested on a criminal charge, but not yet committed for trial, has confessed.—*Ex p. SENKO-VITCH* (1910), S. R. N. S. W. 738.—**AUS.**

r. ——*PACKER v. PEACOCK* (1912), 13 C. L. R. 577.—**AUS.**

PARKE, *Ex p.* DOUGAL, 72 L. J. K. B. 839; 47 Sol. Jo. 602, D. C.

Annotations.—*Appl.* R. v. DAVIES, [1906] 1 K. B. 32. *Consd.* R. v. CLARKE, *Ex p.* CRIPPEN (1910), 103 L. T. 636. *Mentd.* R. v. PUCK (1912), 28 T. L. R. 197.

Jurisdiction of High Ct. to punish for contempt by inferior cts., *see* Part III., Sect. 3, sub-sect. 2, *ante*.

180. Anticipation of result.—A paragraph inserted in a newspaper commenting on a case pending before the ct. & foretelling the result of the case, is a contempt of ct.—*Re CROWN BANK, Re O'MALLEY* (1890), 44 Ch. D. 649; 59 L. J. Ch. 767; 63 L. T. 304; 39 W. R. 45.

Annotations.—*Expld.* Yorkshire Provident Assoc. v. GILBERT & RIVINGTON (1894), 11 T. L. R. 143. *Distd.* Oppenheim v. Mackenzie (1898), 42 Sol. Jo. 748. *Refd.* *Re* New Gold Coast Exploration Co., [1901] 1 Ch. 860.

181. Letter to possible witness.—Motion to commit R. plff.'s solr., & his son A., who was plff.'s son-in-law, for contempt of ct. in having written letters to various persons, who would probably, from their knowledge of the matters in question in the action, be called as witnesses, & one of whom had in fact been subpoenaed by plff., making charges against defts.:—*Held*: there had been an endeavour to warp the minds of possible witnesses, & an order would be made for committal.—*WELBY v. STILL* (1892), 66 L. T. 523; *sub nom.* *WELBY v. STILL*, 8 T. L. R. 202.

Annotation.—*Refd.* Webster v. Bakewell R. D. C. (1916), 60 Sol. Jo. 307.

182. Publication together of two items of news—Relating to private & criminal proceedings—Tending to prejudice jury trying criminal case.—

(1) Publication together of two items of news, the first relating to private proceedings in a pending action in connection with a share transaction, & the second giving a report of criminal proceedings, not finished, relating to the same transaction:—*Held*: to tend to prejudice the jury trying the criminal case.

(2) *Semble*: a newspaper ought not, before a case comes on for trial, to publish in full the private proceedings, such as the statement of claim or an affidavit charging fraud, or writ containing similar charges.—*R. v. ASTOR, Ex p.* ISAACS, R. v. MADGE, *Ex p.* ISAACS (1913), 30 T. L. R. 10, D. C.

183. Intended sermon—On subject-matter of pending action—Restrained.—Deft. in a pending action, in which many of the inhabitants of a town were to be examined as witnesses, was restrained from preaching a sermon upon the subject in his chapel in the town, & from issuing placards announcing his intention to preach the sermon.—*MACKETT v. HERNE BAY COMRS.* (1876), 24 W. R. 845.

(b) *Knowledge of Pending Proceedings.*

184. Whether knowledge essential to constitute offence—Reflections on possible parties.—Subsequently to the commencement of an action an article was published in a newspaper containing comments on the subject-matter of the action & reflections on possible parties. The publication was made without knowledge of proceedings having been instituted. On motion to commit the editor & printer for contempt:—*Held*: as the offence was committed with ignorance of the action,

to hold that resps. had committed a contempt would be an improper extension of the doctrine that a person is bound to take cognisance of what takes place in Her Majesty's Cts.

When the contempt alleged is in the nature of a criminal offence *scienter* must be shown, or, as in the case of contempt against wards of ct., reasonably inferred.—*METROPOLITAN MUSIC HALL CO. v. LAKE* (1889), 58 L. J. Ch. 513; 60 L. T. 749; 5 T. L. R. 329.

Annotation.—*Distd.* *Re* Crown Bank, *Re* O'Malley (1890), 59 L. J. Ch. 767.

185. ————]—*Ex p.* FOSTER (1894), *Times*, Feb. 5.

186. ————]—**Lunacy proceedings.**—*Re* TOWNSEND (MARQUIS), No. 298, *post*.

See, further, LUNATICS & PERSONS OF UNSOUND MIND.

(c) *Intention to prejudice.*

187. Whether necessary to constitute offence—

Absence of malus animus—Article without prejudicial effect.—A party having been charged before the coroner with murder, a newspaper, pending the inquiry, published an article strongly reflecting upon him as a murderer. Having been committed for trial, he was found guilty of manslaughter, & sentenced. Upon an application by him for a rule for a criminal information for the article:—*Held*: the ct. would not interfere on the ground that there was no personal malice suggested, & that the article could now exercise no prejudicial influence.—*Ex p.* SMITH (1869), 21 L. T. 294.

188. ————]—*YORKSHIRE PROVIDENT ASSURANCE CO. v. GILBERT & RIVINGTON* (1894), 11 T. L. R. 143.

189. ————]—*Re* FOWLER & MILSON (1896), *Times*, May 18.

Annotation.—*Refd.* R. v. Parke (1903), 52 W. R. 215.

190. ————]—(1) The publication in a newspaper, pending the trial of a criminal charge, of observations which may interfere with the course of justice is technically a contempt of ct. But the ct. will not exercise its extraordinary power of committal unless it be clearly shown that such comments were really calculated or intended to prejudice a fair trial.

(2) Motions for committal should never be made except in extreme cases.—*R. v. PAYNE*, [1896] 1 Q. B. 577; 65 L. J. Q. B. 426; 71 L. T. 351; 41 W. R. 605; 12 T. L. R. 321; 40 Sol. Jo. 410, D. C.

Annotations.—*As to* (1) *Consd.* *Re* New Gold Coast Exploration Co., [1901] 1 Ch. 860; *R. v. Parke*, [1903] 2 K. B. 432; *R. v. Daily Mail Proprietors* (1907), *Times*, Jan. 15.

191. ————]—**Repetition of previous comments.**—The ct. refused to commit deft. for commenting adversely upon the character of plff., such comments not referring directly to the action before the ct., & being a repetition of similar comments not connected with the particular matter in dispute made for some years before the action was brought, the ct. not being satisfied that the comments were made with intent to affect unfairly the trial of the action, or that they were calculated to interfere with the course of justice.—*PHILLIPS v. HESS* (1902), 18 T. L. R. 400, D. C.

180 i. Anticipation of result.—While a criminal information for libel was pending against W., deft. wrote a letter to a newspaper, reflecting upon one of the judges who had delivered judgment on the application for such information, & stating that W. was "as certain to be convicted as a libeller ever was before his trial":—

Held: such letter was clearly a contempt of ct.—*R. v. WILKINSON, Re* HOUSTON (1877), 41 U. C. R. 42.—*CAN.*

180 ii. ————]—A statement in a newspaper editorial to the effect that one of the parties to a pending suit will lose the case, is a contempt of ct.—

STODDART v. PRENTICE (1898), 6 B. C. R. 308.—*CAN.*

PART IV. SECT. 3, SUB-SECT. 3.—
A. (b).

184 i. Whether knowledge essential to constitute offence.—*GRAY v. DAVIES BROTHERS, LTD.* (1915), 11 Tas. L. R. 48.—*AUS.*

Sect. 3.—Speeches, writings and acts tending to defeat the ends of justice: Sub-sect. 3, A. (c) & (d) i., ii. & iii.]

192. — Article of a series.]—The ct. refused to commit the publisher of an article in a newspaper for contempt of ct., on the ground that the article complained of was not prompted by the fact that litigation was pending between appct. & another person, but was one of a series of articles attacking appct. that had appeared for a number of years in the newspaper in question.—*Re LABOUCHERE, KENSIT v. EVENING NEWS, LTD.* (1901), 18 T. L. R. 208, D. C.
Annotation:—Reid. Phillips v. Hess (1902), 18 T. L. R. 400.

(d) *Calculated to prejudice.*

i. *In General.*

193. General rule.]—It is a contempt of ct. to publish anything in reference to the parties to, or the subject-matter of, a pending litigation, which tends to excite a prejudice against those parties or their litigation.—*TICHBORNE v. TICHBORNE* (1870), 39 L. J. Ch. 398; 22 L. T. 55; 18 W. R. 621.

194. — Creation of prejudice essence of offence.]—An application to commit for contempt of ct. was refused on the ground that there was nothing in the article calculated to prejudice the course of justice.—*FAIRCLOUGH v. MANCHESTER SHIP CANAL CO.* (1896), 13 T. L. R. 56, C. A.
Annotation:—Mentd. Stancomb v. Trowbridge U. C., [1910] 2 Ch. 190.

195. —.]—*OPPENHEIM v. MACKENZIE* (1898), 42 Sol. Jo. 748.

196. —.]—*R. v. DAILY MAIL* (1907), *Times*, Jan. 15.

197. —.]—*R. v. NIELD* (1909), *Times*, Jan. 27.

198. — Test of criminality.]—*R. v. TIBBITS*, No. 178, *ante*.

199. Slight or technical offences—Information supplied by complainant.]—Although a publication by a newspaper proprietor in his paper of comments on a suit, before it comes to a hearing, is clearly a contempt of ct., yet where such comments are not malevolent or libellous, & the party coming to complain of them himself furnished the materials upon which they are founded, he will not be permitted, especially after a public apology in the offending newspaper, to take advantage of the technical contempt, & will not have his costs of proceedings instituted by him for a committal for the contempt.—*VERNON v. VERNON* (1870), 40 L. J. Ch. 118; 23 L. T. 696; 19 W. R. 401.

200. — Jurisdiction of court.]—The publication in a newspaper, pending an action or before

the trial of an action, of any observations which in any way prejudice the parties to the action is technically a contempt of ct. But the ct. will not exercise its extraordinary power of committal if the offence complained of is of a slight or trifling nature, but only if it is likely to cause substantial prejudice to the parties to the action.—*HUNT v. CLARKE* (1889), 58 L. J. Q. B. 490; *sub nom. Re O'MALLEY, HUNT v. CLARKE*, 61 L. T. 343; 37 W. R. 724; 5 T. L. R. 650, C. A.

Annotations:—Apld. R. v. Payne, [1896] 1 Q. B. 577. *Conad. Greenwood v. Leather-Shod Wheel Co.*, (1898), 14 T. L. R. 241. *Apld. Re New Gold Coast Exploration Co.*, [1901] 1 Ch. 860. *Reid. Re Martindale*, [1894] 3 Ch. 193; *Re O'Connor, Cheshire v. Strauss* (1896), 12 T. L. R. 291; *Shaw v. India Rubber (Mexico)* (1900), 44 Sol. Jo. 295; *Phillips v. Hess* (1902), 18 T. L. R. 400.

201. —.]—*Re EVENING NEWS & POST* (1892), *Times*, Dec. 9.

202. —.]—*Re GATES & LONDON CONGREGATIONAL UNION & EAST LONDON PUBLISHING CO.*, *R. v. MEAD* (1895), 11 T. L. R. 204, D. C.

203. —.]—*R. v. PAYNE*, No. 190, *ante*.

204. —.]—*POTTER v. CLAWSON* (1912), 47 L. Jo. 735.

Jurisdiction of ct. to punish for contempt, *see* Part III., *ante*.

205. — Pending election petition.]—Newspapers published correspondence, in which the sitting member for the M. Boroughs, against whose return there was a petition, stated that artifices of a very discreditable kind were being adopted in order to trump up a case:—*Held*: the publication did not in the circumstances of the case amount to a contempt of ct.—*Re MONTGOMERY ELECTION PETITION, APPLICATION AGAINST "THE TIMES," "STANDARD" & "MORNING POST"* (1892), 9 T. L. R. 93.

Annotation:—Reid. Re Wigan (Swinley Ward) Election Petn., Re Wall (1894), 10 T. L. R. 261.

206. —.]—*Re ROCHESTER ELECTION PETITION* (1892), *Times*, Dec. 9.

207. —.]—*Re PONTEFRAC ELECTION PETITION, SHAW v. RECKITT* (1893), 9 T. L. R. 430, D. C.

208. Article not pronouncing on guilt or innocence of prisoner.]—*PIGOTT v. DAILY TELEGRAPH (PROPRIETOR)* (undated), cited 17 W. R. at p. 334.
Annotation:—Reid. Re Belfast Election Petn. (1868), 17 W. R. 333.

ii. *Comments on Parties.*

209. Libel on parties.]—*Re QUICK*, No. 161, *ante*.

210. Against conduct of petitioner—Lunacy proceedings.]—Commitment in the jurisdiction of lunacy for a contempt by the publication of a

PART IV. SECT. 3, SUB-SECT. 3.— A. (d) i.

193 i. General rule—Tendency to prejudice not sufficient.]—In determining whether comments published in a newspaper upon a pending trial amount to a contempt of ct. it must be reasonably probable, in the circumstances of the case that an injustice may be done to one of the litigants. A mere tendency to prejudice the trial is not sufficient.—*Re EBSWORTH, Ex p. TOMPARTT* (1891), 17 V. L. R. 391.—*AUS.*

s. — Calculated to prejudice possible witnesses.]—The ct. will punish, as an interference with the course of justice & of fair trial, the use of language calculated to affect the minds of persons who might otherwise be willing to give evidence in a pending cause, or to deter them from coming forward as witnesses. The fact that such language was used by a priest at the altar to his congregation does

not thereby confer any privilege, nor mitigate the contempt.—*Re SOUTH MEATH ELECTION PETITION, FAY'S CASE* (1892), 30 L. R. Ir. 659.—*IR.*

t. —.]—A petition was lodged impeaching the validity of an election & the petition was set down for trial. Before the date fixed for trial persons issued a circular calling upon the inhabitants of a division to contribute to a fund, one of the objects of which was to defend the candidates against whom the election petition was pending, & the circular said "no matter what position those candidates occupy we feel it would be manifestly unfair to ask or expect them to defray out of their own resources the costly litigation forced on them by a few nonentities. We, therefore, appeal to you with confidence to assist us for the above objects, & thereby lend a hand to drag into God's light of day these traitors who live on libelling our country & to frustrate them in their

attempts to injure & persecute the chosen representative of the people":—*Held*: the above constituted a contempt of ct. as being calculated to prejudice the minds of those from among whom the witnesses to support the petition would be drawn.—*Re BOYLE LOCAL GOVERNMENT ELECTION PETITION* (1905), 39 L. T. 243.—*IR.*

199 i. Slight or technical offence.]—*GUEST v. KNOWLES, Re ROBERTSON* (1908), 17 O. L. R. 416; 42 O. W. R. 1201.—*CAN.*

199 ii. — Article possibly libellous.]—*R. v. BONNAR* (No. 2) (1903), 14 Man. L. R. 481.—*CAN.*

PART IV. SECT. 3, SUB-SECT. 3.— A. (d) ii.

s. Against conduct of persons against whom criminal information for conspiracy was pending.]—*R. v. PARNELL* (1880), 14 Cox, C. C. 474.—*IR.*

pamphlet reflecting on petitioner. Ignorance of the contents will not excuse the printer.—*Ex p. JONES* (1806), 13 Ves. 237; 33 E. R. 283, L. C.

Annotations.—*Expld. & Apprvd.* *Burdett v. Abbott*, *Burdett v. Colman* (1817), 5 Dow, 165. *Consd. R. v. Clement* (1821), 4 B. & Ald. 218; *Powis v. Hunter* (1832), 3 L. J. Ch. 31; *Re Ludlow Charities*, *Charlton's Case* (1837), 2 My. & Cr. 318. *Reid. Re Martin*, *Ex p. Van Sandau* (1845), 4 L. T. O. S. 389; *Birch v. Walsh*, *O'Mahony's Case* (1846), 8 L. T. O. S. 372; *Re General Exchange Bank* (1866), 12 Jur. N. S. 465; *Vernon v. Vernon* (1871), 19 W. R. 404.

211. Against conduct of debtor—In bankruptcy proceedings—Made upon official receiver's report.—Comments on the report of the official receiver in bkpcy. before it has been read to the ct., reflecting on the conduct of a debtor, may amount to contempt of ct. The ct. will not, however, commit except in a case where a real attempt has been made to interfere with the course of justice.

A limited company cannot be committed for contempt of ct.—*Re HOOLEY*, *Ex p. HOOLEY* (1899), 79 L. T. 706; 6 Mans. 44.

Comments on prisoners.—*See* Nos. 176–179, *ante*.

212. Against conduct & character of plaintiff—Proceedings represented as vexatious.—Pending proceedings in this ct. attacks on pltf. & his witnesses were published, representing those proceedings as vexatious, & that the witnesses had in their evidence been guilty of perjury:—*Held*: this, being calculated to disturb the free course of justice, was a contempt of ct.—*LITTLE v. THOMSON* (1839), 2 Beav. 129; 48 E. R. 1129.

Annotations.—*Reid.* *Shaw v. Shaw* (1861), 31 L. J. P. M. & A. 35; *Tichborne v. Mostyn*, *Tichborne v. Tichborne* (1867), L. R. 7 Eq. 55, n.; *R. v. Murphy* (1869), L. R. 2 P. C. 536; *Tichborne v. Tichborne* (1870), 18 W. R. 621.

213. ————*TICHBORNE v. TICHBORNE*, No. 193, *ante*.

214. ————**Imputation of fraud.**—*WATT v. MAXIM-WESTON ELECTRIC CO., MAXIM-WESTON ELECTRIC CO. v. WATT* (1888), 5 T. L. R. 170.

215. ————**Repetition of libel.**—Defts. in an action of libel, brought in respect of some paragraphs which appeared in their newspaper, repeated in the newspaper, after action brought, substantially the same charges which constituted the alleged libel. Pltf. made an application to commit deft. for contempt of ct.:—*Held*: the application would be refused.—*CRONMIRE v. DAILY BOURSE, LTD.* (1892), 9 T. L. R. 101, D. C.

Annotation.—*Consd. R. v. Blumenfeld*, *Ex p. Tupper* (1912), 28 T. L. R. 308.

216. ————*—*—An application to commit for contempt of ct. made by defts. in a libel action who are continuing to publish the libel complained of will not be regarded with favour by the ct., but such continued publication is no palliation of the offence.—*WILSON v. COLLISON, Re JOHNSON & MITCHELL* (1895), 11 T. L. R. 376, D. C.

217. ————*—*—*RUSSELL v. RUSSELL* (1894), 11 T. L. R. 38.

218. ————**Imputation of dishonesty.**—*ILKLEY LOCAL BOARD v. LISTER* (1895), 11 T. L. R. 176.

219. ————*—*—*HERRING v. BRITISH & FOREIGN MARINE INSURANCE CO., LTD., Re ROBINSON* (1895), 11 T. L. R. 345.

220. ————**Charge of undue influence.**—*SPURRELL v. DE RECHBERG* (1895), 11 T. L. R. 313.

221. ————*—*—Where a newspaper article, having relation to a pending suit, was, in the opinion of the ct. calculated to create prejudice

against pltf. & to cast opprobrium upon his solr., an order for committal of the publisher was made, but not, however, to be enforced for three weeks in order to afford an opportunity for the publication of an apology.—*ROBSON v. DODDS* (1869), 20 L. T. 911.

222. ————**Libellous statements.**—*OPPENHEIM v. MACKENZIE* (1898), 42 Sol. Jo. 718.

223. ————**In instituting action.**—*SHAW v. INDIA RUBBER (MEXICO), LTD.* (1900), 14 Sol. Jo. 295.

224. ————*—*—*Ex p. THE STANDARD* (1907), *Times*, Jan. 28.

225. ————**Matters not before court.**—*P'HILLIPS v. HESS*, No. 191, *ante*.

226. ————*—*—It is not a sufficient answer to a motion to commit deft. for commenting adversely on the character of pltf. during the pendency of an action for deft. to show that the comments had no reference to the subject-matter of the action if it is clear that the trial of that action will be prejudiced by the publication of those comments.—*HIGGINS v. RICHARDS* (1912), 28 T. L. R. 202, D. C.

227. ————*—*—*Re EHRMAN* (1909), *Times*, Feb. 18.

228. ————**Against conduct of defendant.**—*Re READ & HUGGONSON*, No. 1, *ante*.

229. ————*—*—*PETERS v. BRADLAUGH* (1888), 4 T. L. R. 414, D. C.

230. ————*—*—*GREENWOOD v. LEATHER-SHOE WHEEL CO., LTD.* (1898), 14 T. L. R. 211.

231. ————*—*—*Re BROWN* (1907), *Times*, Nov. 7.

iii. Comments by Parties.

232. Justification by defendant.—An action for libel being brought by A. against L., & also by R. against L., who was the proprietor of a newspaper, & interrogatories having been filed by L. against A., an article was written & published by L. in his newspaper commenting on that subject, & repeating the grounds of the actions, & setting forth that L. would be ready before the jury to prove all the libels; but there was no allusion to the ct. or judges directly or indirectly:—*Held*: (the court being equally divided) L. had not committed any contempt of ct.—*ROBERTSON v. LABOUCHERE* (1878), 42 J. P. 710.

233. ————*—*—*HOWITT v. FAGGE* (1890), 12 T. L. R. 426.

234. ————*—*—Where deft. in a libel action swears that he is going to justify the words of the alleged libel the ct. will not issue a writ of attachment against him in respect of comments made by him after the issue of the writ unless it is satisfied that the plea of justification is not genuine or unless the comments are made near the time of trial or made at a place near where the trial is to take place & are calculated to deter witnesses from coming forward & speaking their minds freely or are calculated to warp the minds of jurymen.

In a case where pltf. sought to stop deft.'s mouth, while continuing to comment on the case himself, the ct. ought not to interfere (*LUSH, J.*)—*R. v. BLUMENFELD*, *Ex p. TUPPER* (1912), 28 T. L. R. 308.

235. Ex parte statements.—(1) A party to a suit has no right during the progress of it to publish any statement of the proceedings which may prejudice the mind of the public against his opponents.

PART IV. SECT. 3. SUB-SECT. 3.—A. (d) iii.

b. General rule.—When either of the parties to a cause has published matters calculated to bring the proceedings of the ct. into contempt, & to

prejudice an approaching trial, the ct. will grant an application for an attachment.—*KIERAN v. BYRNE* (1852), 5 Ir. Jur. 46.—*IR.*

235 i. Ex parte statements—By defendant.—Pltf. commenced an action

against deft. to secure damages for an alleged libel published in deft.'s newspaper. After a writ had been issued deft. published an article stating that an action had been commenced against him & then followed this passage: "meanwhile 'Truth' my

Sect. 3.—Speeches, writings and acts tending to defeat the ends of justice: Sub-sect. 3, A. (d), iii., iv. & v., (e) & B.]

(2) It is a strong *prima facie* presumption that such a narrative, published by a party to the suit, cannot be an impartial representation of such proceedings.

(3) The ct. will restrain a party from publishing or offering for sale during the progress of a suit, any pamphlet or book containing unfair statements of the proceedings in such suit.—*COLEMAN v. WEST HARTLEPOOL HARBOUR & RY. CO.* (1800), 2 L. T. 766; 8 W. R. 734.

Annotation:—Refd. Kitcat v. Sharp (1882), 52 L. J. Ch. 134.

236. —.]—Pending an action for infringing a trade mark plffs. are at liberty to warn the trade by circular, but to introduce discussion of the merits of the action is a contempt.

Interference with the course of justice by a party publishing *ex p.* statements is not less contempt of ct. because the statements are libellous, or because the party is prepared to justify the libel, or because the libel deals with the merits of the action (*CHITTY, J.*).—*COATS (J. & P.) v. CHADWICK*, [1894] 1 Ch. 347; 63 L. J. Ch. 328; 70 L. T. 228; 42 W. R. 328; 10 T. L. R. 226; 38 Sol. Jo. 217; 8 R. 159.

Annotation:—Refd. Re New Gold Coast Exploration Co., [1901] 1 Ch. 860.

iv. Comments on Witnesses.

237. Abuse of persons making affidavits.]—*Re READ & HUGGONSON*, No. 1, *ante*.

238. —.]—(1) Pending a suit & after the time had expired for defts. to file affidavits, an article appeared in a local newspaper commenting upon the persons who had made affidavits on behalf of defts. attributing to them falsehood, ignorance & self-interest, & holding them up to public contempt & ignominy:—*Held*: the article was a contempt of ct. & the publisher of the newspaper would be committed to prison.

(2) The publisher having made an affidavit in which he expressed his regret & contrition for having unintentionally committed a contempt of ct., & having undergone ten days' confinement, he was discharged on payment of costs & fees although he made no apology to deponents for the imputations cast on them.—*FELKIN v. HERBERT* (1864), 33 L. J. Ch. 294; 9 L. T. 635; 10 Jur. N. S. 62; 12 W. R. 241.

239. —.]—An article was published in a newspaper giving an account of certain affidavits which had been filed in a suit but which had not come before the ct. The writer went on to comment on the affidavits, & as to some of them used these expressions "many of these are important enough, if the deponents can endure cross-examination in the witness box; many are obviously false, absurd & worthless":—*Held*: the publisher of the newspaper had been guilty of a gross contempt of ct.

The ct. will discountenance any attempt to prejudice mankind against the merits of a case before it has been heard, & will protect every suitor against that which can affect the minds of persons who might be willing to give evidence, & which may prevent persons from giving evidence.—*TICHBORNE v. MOSTYN, TICHBORNE v. TICHBORNE*

(1867), L. R. 7 Eq. 55, n.; 17 L. T. 5; 15 W. R. 1072.

Annotations:—Refd. Daw v. Eley (1868), L. R. 7 Eq. 40; *Re Cheltenham & Swansea Ry. Carriage & Wagon Co.* (1869), L. R. 8 Eq. 580; *Robson v. Dodds* (1869), 20 L. T. 941; *Vernon v. Vernon* (1870), 23 L. T. 696; *Guilding v. Morel, Cobbett* (1888), 4 T. L. R. 198; *Re American Exchange in Europe, American Exchange in Europe v. Gillig* (1889), 58 L. J. Ch. 706; *Re Crown Bank, Re O'Malley* (1890), 63 L. T. 304.

240. Allegations of perjury.]—LITTLER v. THOMSON, No. 212, *ante*.

241. —.]—Deft. had been committed for perjury by the judge, who tried an ejectment in which he was claimant, & in which the issue was the question of his identity with a certain baronet alleged by defts. to be dead. The jury, during deft.'s case, had expressed themselves satisfied that the claimant was not the person he swore he was, & he elected to be nonsuited. The grand jury at the Central Criminal Ct. found true bills against him for perjury & forgery; the prosecution removed the indictments by *certiorari* into this ct.; & it had been fixed, upon application of the A.-G., that the trial should take place at bar next Easter term. Deft. & his friends, amongst whom were two members of Parliament & one barrister, had held public meetings for the purpose of obtaining money for the defence at the forthcoming trial, & remarks had been made by deft. & the three friends mentioned, imputing perjury, & conspiracy to the witnesses for the defence at the trial of the ejectment, & prejudice & partiality to the Lord Chief Justice of this ct., who, they said, had proved himself unfit to preside at the trial of the indictments. They also asserted the innocence of deft., & the injustice of his treatment:—*Held*: (1) the trial of these indictments was a proceeding of the ct. then pending; (2) although the remarks at the meetings might be the subject of a criminal information, yet the parties who made them might also be prosecuted summarily for contempt of ct.; (3) these remarks indicated an attempt by means of vituperation to deter the Lord Chief Justice from taking any part in the trial, & also by attacks on the witnesses themselves to influence the public mind & prejudice the jury, & they unwarrantably interfered with the even & ordinary course of justice; (4) it was no excuse that the motive or purpose for which the meetings were held was justifiable, nor that the attempt to interfere with the course of justice was ineffectual; (5) the proceedings were a gross contempt of ct., & it was the duty of the ct. to put a stop to them; (6) the ct. would not allow the privilege of the House of Commons to prevent punishment by imprisonment of its members for a contempt in the administration of justice if the occasion required it.—*R. v. CASTRO, ONSLOW'S & WHALLEY'S CASE* (1873), L. R. 9 Q. B. 219; 28 L. T. 222; *sub nom. R. v. ONSLOW & WHALLEY*, 12 Cox, C. C. 358; *sub nom. Re WHALLEY & ONSLOW*, 37 J. P. Jo. 68.

Annotations:—As to (3) Refd. Re Davies (1888), 21 Q. B. D. 236. *Generally, Mentd. Re Davies, Butson v. Davies* (1888), 4 T. L. R. 580.

v. Comments on Subject-Matter of Action.

242. Statements relative to merits of cause.]—*R. v. BURDETT*, No. 143, *ante*.

243. —.]—*COLEMAN v. WEST HARTLEPOOL HARBOUR & RY. CO.*, No. 235, *ante*.

244. —.]—*COATS (J. & P.) v. CHADWICK*, No. 236, *ante*.

245. —.]—*Tending to show that plaintiff's case*

newspaper is preparing to do its duty by this Jackanapes" the plff. " & his personal political social & philanthropic career, in such manner as to

facilitate the task of a Judge & jury in estimating the real damage done to the true character of such a man " :—*Held*: the article was calculated to

interfere with the due administration of justice & amounted to a contempt of ct.—*Re NORTON, Ex p. CAULFIELD* (1898), 19 N. S. W. L. R. 113.—*AUS.*

untenable.]—*Re "FINANCE UNION" YORKSHIRE PROVIDENT ASSURANCE Co. v. "REVIEW" PUBLISHERS* (1895), 11 T. L. R. 167, D. C.

246. —[—*MAGNUS v. PLUMBERS Co.* (1899), cited in Yearly Practice of the Supreme Court for 1923, at p. 709.

247. Cautioning persons from purchasing goods—On ground of injunction restraining disposal—Injunction obtained *bonâ fide*.]—The publishing of a handbill, cautioning persons from purchasing of deft. certain goods, on the ground of an injunction having issued to restrain the disposal of them is not a contempt, the injunction having been obtained *bonâ fide*.—*POWIS v. HUNTER* (1832), 2 L. J. Ch. 31.

248. Reflection on goods supplied by plaintiff—During pendency of libel action—In respect of same goods.]—*BIRMINGHAM VINEGAR BREWERY v. HENRY* (1894), 10 L. L. R. 586.

249. Patent rights—Disputing novelty of invention—Comment by solicitor for party.]—While a suit was pending to restrain the infringement of a patent, in which one of the issues raised was as to the novelty of pltf.'s invention, a discussion having arisen in a newspaper as to the merits of the invention, deft.'s solr. wrote, under an assumed name, a letter, which was published in a newspaper, taking part in the discussion, & stating facts tending to disprove the novelty of the invention. Pltf. thereupon sent a letter to the editor of the newspaper, which the editor refused to insert on account of its personal imputations, in which he referred to the suit, & suggested that the writer of the letter was an interested party. The editor, not knowing that the writer was the solr. in the suit, but knowing that he was a solr. subsequently published a further letter from him disputing the novelty of the invention:—*Held*: the solr. had been guilty of a contempt of ct. in writing for publication letters tending to influence the result of the suit.—*DAW v. ELEY* (1868), L. R. 7 Eq. 49; 38 L. J. Ch. 113; 33 J. P. 179; *sub nom. Ex p. COLLETTE, DAW v. ELEY*, 17 W. R. 245.

Annotations:—*Refd. Re Cheltenham & Swansea Ry. Carriage & Wagon Co.* (1869), L. R. 8 Eq. 580; *Tieborne v. Tieborne* (1870), 18 W. R. 621; *Vernon v. Vernon* (1870), 40 L. J. Ch. 118; *Brodribb v. Brodribb* (1886), 11 P. D. 66; *Guilding v. Morel, Cobbett* (1888), 4 T. L. R. 198.

250. —Disputing validity of patent—Letter by chairman of plaintiff company.]—*DE MARE'S PATENT* (1899), 16 R. P. C. 528.

251. Disputed commons rights.]—*FIELDEN v. SWEETING* (1895), 11 T. L. R. 534.

See, also, Nos. 183, 184, ante.

(e) Parties liable.

252. Limited company—Liability of manager.]—Where an assocn. which was a limited co.,

disseminated amongst newspapers, paragraphs amounting to contempt of ct., the manager of such assocn. was dealt with by the ct. as being responsible.—*Re ROBBINS (OF PRESS ASSOCN.), Ex p. GREEN* (1891), 7 T. L. R. 411, D. C.

Companies generally, *see COMPANIES.*

Liability of printers & publishers.]—*See PRESS & PRINTING.*

B. Advertisements.

253. Offering reward for evidence—As to validity of marriage.]—Advertisements were inserted in the public prints, that whoever should discover & make legal proof of the marriage in question should have £100 reward:—*Held*: a contempt of the ct. & the party procuring it would be committed.—*POOL v. SACHEVEREL* (1720), 1 P. Wms. 675; 24 E. R. 585, L. C.

Annotations:—*Consd. Wilkinson v. Gordon* (1821), 2 Add. 152. *Consd. & Distd. Plating Co. v. Farquharson* (1881), 17 Ch. D. 49. *Consd. Butler v. Butler* (1888), 57 L. J. P. 42. *Refd. Re Ludlow Charities, Charlton's Case* (1837), 2 My. & Cr. 316; *R. v. Most* (1881), 7 Q. B. D. 214.

254. —[—]—It is a contempt of ct. for a party in a pending suit to advertise for witnesses who will for reward prove the invalidity of a marriage the validity of which is in issue.—*WILKINSON v. GORDON* (1821), 2 Add. 152; 162 E. R. 250.

Annotation:—*Mentd. In the Estate of Crippon*, [1911] P. 108.

255. —As to validity of patent.]—An injunction having been granted to restrain defts. from infringing a patent, they gave notice of appeal, & published in a newspaper an advertisement inviting the trade to subscribe towards the expenses of the appeal, & also an advertisement offering a reward to any one who could produce documentary evidence that nickel plating was done before 1869. Pltfs. moved to commit the publishers of the newspaper for contempt of ct. in publishing these advertisements, as being an interference with the course of justice, stating at the same time that they did not press for a committal, but would be satisfied with an expression of regret & an undertaking not to repeat the advertisements:—*Held*: (1) as all persons engaged in the trade of plating had a common interest in resisting the claims of pltfs., an advertisement asking them to contribute to the expenses of defending the proceedings was open to no objection; (2) the advertisement offering a reward for documentary evidence was free from objection.

(3) Motions to commit, when there is no intention to ask for a committal, but merely for an apology & costs, will be discouraged, & no costs of such motions will be given.

(4) Costs as between solr. & client are sometimes given to the party moving, but I do not remember

PART IV. SECT. 3, SUB-SECT. 3.—A. (d) v.

245 i. Statements relative to merits of cause—Tending to show that plaintiff's case untenable.]—Pltf. brought action against a bank & its officers under an Act providing that a penalty might be recovered against a bank or its officers, if the officers of the bank in making quarterly returns required by the Act, make false returns. After action brought there appeared with reference to the returns a paragraph to the effect that the bank had no doubt that it would be able to prove unmistakably that the figures embraced in the returns were absolutely correct:—*Held*: in making these statements, though with a good & proper motive to allay public excitement, the newspaper prejudged the case & was guilty of contempt of ct.—*Re CHOSSELEY* (1894), 15 N. S. W. L. R. 154.—*AUS.*

247 i. Cautioning persons from selling

goods—On ground of action for injunction.]—H. owned a registered design for golf balls, & brought an action to interdict the M. from infringing it. *Pendente lite* H. distributed to retail dealers a circular stating that M. had applied a fraudulent or obvious imitation of their design to golf balls & that proceedings had been commenced against M. & warning retail dealers against selling such balls. M. applied to have H. interdicted from distributing these circulars:—*Held*: the circulars were publications prejudicing the case *sub judice*, & H. was in contempt of ct.—*ST. MUNGO MANUFACTURING Co. v. HUTCHINSON, MAIN & CO., LTD.* (1908), 25 R. P. C. 356.—*SCOT.*

PART IV. SECT. 3, SUB-SECT. 3.—A. (e).

c. Newspaper—Liability of editor & manager.]—During a trial there was published in a newspaper an article

which would prejudice the fair trial of the action & was a contempt of ct. Pltfs. moved to commit D. the editor & manager of the newspaper, for contempt of ct.:—*Held*: D.'s offence was not palliated by the statement that it was impossible for him to supervise all the reports brought in.—*HATFIELD v. HEALY* (1911), 18 W. L. R. 512.—*CAN.*

d. —Liability of proprietor.]—The proprietor of a paper in which his employee inserted in his absence, & without his knowledge, an article, which was a contempt of ct., commenting on a decision of the ct.:—*Held*: the proprietor was liable.—*R. v. FOWLER* (1905), 1 Tas. L. R. 53.—*AUS.*

e. —Liability of writer.]—A letter, published in a newspaper, was a contempt of ct.:—*Held*: the writer was liable.—*Ex p. HOVELL* (1869), 8 N. S. W. S. C. R. 163.—*AUS.*

Sect. 3.—Speeches, writings and acts tending to defeat the ends of justice: Sub-sect. 3, B., C., D. & E.]

any case where they have been given to resp. (JESSEL, M.R.).

I think that costs as between solr. & client may sometimes be given to the party moving by way of indemnifying him, instead of committing resp., but I do not think they can be given to resp. (JAMES, L.J.).—*PLATING Co. v. FARQUHARSON* (1881), 17 Ch. D. 49; 50 L. J. Ch. 406; 44 L. T. 389; 45 J. P. 568; 29 W. R. 510, C. A.

Annotations:—*As to (2) Refd. Butler v. Butler* (1888), 57 L. J. P. 42. *As to (3) Consd. Hunt v. Clarke* (1889), 58 L. J. Q. B. 490. *Fold. Metropolitan Music Hall Co. v. Lake* (1889), 58 L. J. Ch. 513; *Re New Gold Coast Exploration Co.*, [1901] 1 Ch. 860. *Refd. Re Martindale*, [1894] 3 Ch. 193; *R. v. Payne* (1896), 65 L. J. Q. B. 426; *Scott v. Scott*, [1912] P. 241. *As to (4) Refd. Bromilow v. Phillips* (1891), 40 W. R. 220; *Lee v. Aylesbury U. D. C.* (1902), 19 T. L. R. 106. *Generally, Mentd. Re Crown Bank, Re O'Malley* (1890), 59 L. J. Ch. 707; *British Cash & Parcel Conveyors v. Lamson Store Service Co.*, [1908] 1 K. B. 1006.

256. — As to proof of adultery of wife—*Wife petitioning for divorce.*—In a suit for divorce on the wife's petition on the grounds of adultery & cruelty, the husband caused to be printed & published about the district in which the wife & her family resided, a notice purporting to be signed by him, offering a reward for evidence of the confinement of a young married woman of a female child, "probably not registered":—*Held*: this was a contempt of ct. as tending to prejudice petitioner, & discrediting her in the assertion of her rights, & a writ of attachment would be ordered to issue.—*BUTLER v. BUTLER* (1888), 13 P. D. 73; 57 L. J. P. 42; 58 L. T. 563.

257. Offering reward for information—Charges against co-respondent in matrimonial cause.]

A co-resp. in a suit for divorce, immediately after the service of the citation, caused advertisements to be published denying the charges made in the petition, & offering a reward for information which would lead to the discovery & conviction of the authors of them:—*Held*: these advertisements constituted a contempt of ct.—*BRODRIBB v. BRODRIBB* (1886), 11 P. D. 66; 55 L. J. P. 47; 56 L. T. 672; 50 J. P. 407; 34 W. R. 580.

Annotation:—*Fold. Butler v. Butler* (1888), 13 P. D. 73.

258. Referring to pending proceedings.]—I., who was the solr. acting for parties in proceedings pending before a commission of charitable uses, inserted an advertisement referring to such proceedings. The ct. committed him to prison for contempt in causing the advertisement to be inserted.—*Re INGLES* (1740), *Sanders' Chancery Orders* 552, L. C.

259. ——The publisher of advertisements as to proceedings in ct. was committed for a contempt, but discharged on his submission & full disclosure.—*ANON.* (1754), 2 Ves. Sen. 520; 28 E. R. 332; *sub nom. CANN v. CANN*, Dick. 795; 3 Hare, 333 n., L. C.

Annotations:—*Refd. Re Ludlow Charities, Lechmere Charities' Case* (1837), 2 My. & Cr. 316; *Re Cheltenham & Swansea Railway Carriage & Wagon Co.* (1869), L. R. 8 Eq. 580; *Hunt v. Clarke* (1889), 58 L. J. Q. B. 490.

260. Calculated to prejudice rights of parties—*Or misrepresent position or character.]*—*MATTHEWS v. SMITH* (1844), 3 Hare, 331; 67 E. R. 408.

Annotation:—*Refd. Re General Exchange Bank* (1866), 12 Jur. N. S. 465.

261. — Advertisements of foreign proceedings reflecting on conduct.]—*PARAGUAY REPUBLIC v. LYNCH*, [1872] W. N. 48.

262. Advertisement of hearing of motion & undertaking—Undertaking not to issue advertisement.]—On motion for injunction to restrain deft. from publishing a certain cautionary advertisement, or any other of a like nature, as calculated to injure pltf.'s business, deft. undertook until the trial not to issue the advertisements. Dft. afterwards published in a newspaper a notice of the hearing of the motion, & of his undertaking, which virtually repeated the caution:—*Held*: he had not thereby committed a contempt of ct.—*BUENOS AYRES GAS Co. v. WILDE* (1880), 42 L. T. 657; 29 W. R. 43.

263. Inviting subscriptions for expenses—For defence on criminal charge.]—*R. v. CASTRO, SKIPWORTH'S CASE*, No. 163, *ante*.

264. — Of appeal—From members of trade having common interest.]—*PLATING Co. v. FARQUHARSON*, No. 255, *ante*.

265. Denial of charges by co-respondent.]—*BRODRIBB v. BRODRIBB*, No. 257, *ante*.

266. Action for infringement pending—Asserting exclusive right to manufacture & sell patented article.]—Pltf. in an action for infringement of a patent, while the action was pending, issued advertisements, which, in effect, amounted to statements that the action must succeed. Defts. moved to restrain the issues of these advertisements on the ground that they tended to prejudice defts., & an injunction was granted on the ground that the litigation ought to be allowed to proceed undisturbed by any advertisements or any conduct of the parties. On drawing up the order the registrar inserted an undertaking in damages by the defts. & it was decided the injunction ought to go without any undertaking. Pltf. appealed. The Ct. of Appeal were of opinion that the advertisements did not amount to contempt of ct. & by consent the order was discharged, pltf. undertaking not to issue further advertisements, & defts. not to bring any action for slander of title.—*FENNER v. WILSON & Co. (BARNSELY), LTD.* (1893), 9 T. L. R. 496; 10 R. P. C. 283, C. A.

Annotation:—*Consd. Haskell Golf Ball Co. v. Hutchinson & Main* (1904), 21 E. P. C. 497.

267. — Circulars containing threats against infringement.]—The owners of letters patent commenced an action for infringement of the patent, in which they delivered their statement of claim in May, 1904. In June, they issued advertisements containing threats, which were circulated among the customers of defts. & referred specifically to their goods:—*Held*: the advertisement was not a contempt of ct.—*HASKELL GOLF BALL Co. v. HUTCHINSON & MAIN* (1904), 20 T. L. R. 606; 21 R. P. C. 497.

See, further, PATENTS & INVENTIONS.

268. Of counsel's statement—With report of proceedings.]—After the hearing of a motion to restrain threats on which no order was made, pltf., in order, as he said, to correct a newspaper account of the proceedings, wrote to the newspapers giving his version of what had occurred, & subsequently published the newspaper's account of the proceedings with the statement of his own counsel in heavily leaded type. Defts. moved to commit him for contempt of ct.:—*Held*: pltf.'s advertisement was a contempt as it might bias some persons, but on pltf. undertaking not to repeat the advertisement, no order would be made except that pltf. should pay the costs in any event.—*EDLIN & Co. v. PNEUMATIC TYRE & BOOTH'S CYCLE AGENCY, LTD.* (1893), 10 R. P. C. 317.

PART IV. SECT. 3, SUB-SECT. 3.—B.

1. Inviting subscriptions for expenses—For defence of candidates against whom election petition pending.]—*Re BOYLE LOCAL GOVERNMENT ELECTION PETITION* (1905), 39 L. L. T. 243.—*IR.*

Publication of documents connected with cause.]—See Sub-sect. 3, C., *post*.**269. Advertisement incorporating letter to solicitors—Containing allegations against plaintiff.]**—*Re* CORNISH, STAFF v. GILL, *Re* WILKINS, BAIRD v. STAFF (1893), 9 T. L. R. 196.**C. Publication before Hearing of Documents connected with the Cause.**

270. Counsel's brief.]—Printing a brief before the cause comes on is a contempt as it is prejudicing the world with regard to the merits.—*Re* PERRY (prior to 1742), cited 2 Atk. 472; 26 E. R. 685.

Annotation :—*Re*fd. *Re* Read & Huggonson (1742), 2 Atk. 469.

271. Statement of claim—Containing allegations against defendant.]—If pltf.'s statement of claim in an action contains charges injuriously affecting deft.'s character, & if pltf., before the hearing of the action, sends copies of the statement to persons not parties to the action, he is guilty of a contempt of ct., & will be restrained from further publishing the statement, & ordered to pay the costs of a motion to commit him.—*BOWDEN v. RUSSELL* (1877), 16 L. J. Ch. 414; 36 L. T. 177.

272. ————*Re* O'CONNOR, CHESHIRE v. STRAUSS (1896), 12 T. L. R. 291, D. C.

273. ————*Re* v. ASTOR, *Ex p.* ISAACS, *R. v. MADGE. Ex p. ISAACS*, No. 182, *ante*.

274. With abusive comments by defendants—Threat to publish—Restrained by injunction.]—To publish & circulate during the progress of an action a copy of the pleadings in the action with comments depreciating the case of one of the parties is a contempt of ct., & calculated to prejudice the fair trial of the action, & such contempt, if threatened to be committed, will be restrained by injunction.—*KITCAT v. SHARP* (1882), 52 L. J. Ch. 134; 48 L. T. 64; 31 W. R. 227.

Annotation :—*Re*fd. *Hubbard v. Woodfield* (1913), 57 Sol Jo. 729.

275. Affidavit or writ charging fraud.]—*R. v. ASTOR, Ex p. ISAACS, R. v. MADGE, Ex p. ISAACS*, No. 182, *ante*.

276. Order for appointment of receiver—With recital of material facts relevant to order—To interested parties.]—The parties interested in an order for the appointment of a receiver, took upon them to print it with a recital of the material facts in the cause relevant to the order, and dispersed it among the tenants, & some other parties insisted this was a contempt of ct.:—*Held*: it was not a contempt.—*BAKER v. HART* (1742), 2 Atk. 188; 26 E. R. 694, L. C.

277. Interim report of receiver.]—*MITCHELL v. CONDY*, [1873] W. N. 232.

278. List of creditors—In bankruptcy proceedings.]—*Semle*: printing & publishing a list of

creditors in a bkpcy. & selling the list at one shilling a copy is a contempt of ct.

Whenever anything is done which interferes with the due administration of justice, that is a contempt of ct. It follows that whenever in an administration in bkpcy. anyone takes upon himself to interfere with the due administration of the estate he is guilty of contempt (*VAUGHAN WILLIAMS, J.*).—*Re* ELIOT, PRANCE & CO., *Ex p. ALDAY & BUSHILL* (1897), 13 T. L. R. 486; 41 Sol. Jo. 625, D. C.

As to publication in winding-up proceedings, see Sub-sect. 3, F., *post*.

D. Publication of Inaccurate Reports.

279. General rule.]—The ct. will punish as for a contempt those who make the publication of its proceedings the vehicle of a libel; but, although it has the power of restraining the publication of its proceedings pending litigation, it will not restrain the publication of every unfair report purporting to represent what takes place in open ct.—*BROOK v. EVANS* (1860), 29 L. J. Ch. 616; 2 L. T. 740; 3 L. T. 571; 6 Jur. N. S. 1025; 8 W. R. 688, L. J.

Annotations :—*Consd.* *Dunn v. Bevan, Brodie v. Bevan*, [1922] 1 Ch. 276. *Re*fd. *Tichborne v. Tichborne* (1870), 18 W. R. 621.

280. Where no unfairness intended.]—*DUNCAN v. SPARLING, Re CERTAIN NEWSPAPERS* (1894), 10 T. L. R. 353, D. C.

Annotation :—*Consd.* *R. v. Blumenfeld, Ex p. Tupper* (1912), 28 T. L. R. 308.

281. Misrepresentation of proceedings in court.]—*GRIMWADE v. CHEQUE BANK, LTD.* (1897), 13 T. L. R. 305.

E. Public Representations.

282. Theatrical impersonation of prisoner—Representing facts of crime.]—It is a misdemeanour to prejudice a criminal case by representing, in a theatrical exhibition, a man in the act of committing the offence.

T. was committed to prison to take his trial for the murder of W. The proprietor of a theatre represented the supposed facts of the case in such a manner, that, when a murderer was seized, the audience expressed themselves as understanding that he represented T.:—*Held*: a criminal information would be granted against the proprietor.—*R. v. WILLIAMS* (1823), 2 L. J. O. S. K. B. 30, 43.

Annotations :—*Consd.* *R. v. Tibbits & Windust* (1901), 85 L. T. 521. *Re*fd. *R. v. Parke, Ex p. Dougal* (1903), 72 L. J. K. B. 839.

283. Effigy of prisoner—Exhibited at assize town—During assizes.]—Exhibiting in an assize town models of a prisoner about to be tried at the assizes is not a contempt which the judge of assize can interfere to stop by committing the

PART IV. SECT. 3, SUB-SECT. 3.—C

271 i. Statement of claim—Though published without malice.]—It is a contempt of ct. to publish a statement of claim before the hearing of the case, even although it is published *bona fide* & without malice.—*CAMPBELL v. KENNEDY, Re EVENING STAR* (1884), 3 N. Z. L. R. 8.—N. Z.

g. Petition—Filed—Not referred to in court.]—It is an interference with the administration of justice & constitutes a contempt of ct. to publish the contents of a petition filed, but not yet referred to in open ct.—*DUNSTON v. TRANSVAAL CHRONICLE, LTD.* (1913), T. P. D. 557.—S. AF.

PART IV. SECT. 3, SUB-SECT. 3.—D

279 i. General rule.]—During the

course of a trial by a judge & jury there was published in a newspaper an article purporting to be a report of the case, but which was not a fair report, & was such as might prejudice the jury against pltf's. Upon motion by pltf's. to commit the editor & manager of the newspaper, for contempt of ct.:—*Held*: (1) newspapers have a right to publish fair reports of ct. proceedings which are being held in public, but it is the duty of their proprietors to confine themselves to that, & they have no right to publish comments or publish anything which does not actually occur; & this applies to all judicial proceedings, & the ct. may punish for the publication of improper matters in connection with criminal prosecutions at any time after

proceedings have been instituted; (2) the article would tend to prejudice the fair trial of the action, & was a contempt of ct.—*HATFIELD v. HEALY* (1911), 18 W. L. R. 512.—CAN.

281 i. Misrepresentation of proceedings in court.]—A newspaper published what purported to be a report of proceedings in ct., but which was in many respects exaggerated, incorrect, & injurious, containing unjustifiable imputations upon pltf. On motion for an attachment for contempt of ct.:—*Held*: the ct. was not satisfied that the publication was calculated to obstruct the free course of justice, & ought not to commit for contempt of ct.—*BIRCH v. WALSH* (1846), 10 L. Eq. R. 93.—IR.

Sect. 3.—Speeches, writings and acts tending to defeat the ends of justice: Sub-sect. 3, E. & F.; sub-sects. 4, 5 & 6.]

party exhibiting.—*R. v. GILHAM* (1828), *Mood.* & *M.* 165, *N. P.*

F. Winding-up Proceedings.

284. Advertisement reflecting on petitioning creditors—By directors of company.]—A petition was presented by creditors of a co. praying a winding-up order. Petitioners' debt was a disputed one. After presentation of the petition, but before the hearing, an advertisement was inserted in the newspapers which reflected upon the motives of petitioners in presenting their petition, & was signed by the chairman on behalf of the directors of the co. A motion was made for an order to commit the chairman for contempt of ct.:—*Held*: on the chairman giving an undertaking not to continue or repeat the advertisement, he should not be committed.—*Re* GENERAL EXCHANGE BANK, LTD., *Re* COMPANIES ACT, 1862 (1866), 14 *L. T.* 582; 12 *Jur. N. S.* 465.

285. Circular to shareholders—Attacking directors—Pending hearing of petition.]—Certain shareholders presented a petition for a compulsory winding up of a co. on the ground of misconduct on the part of the directors. Pending the petition, petitioners issued among their brother shareholders, circulars embodying the accusations against the directors, & containing some extracts from the evidence:—*Held*: their conduct did not amount to contempt of ct.—*Re* LONDON FLOUR CO. (1868), 17 *L. T.* 636; 16 *W. R.* 474; *affd.* on other grounds, 19 *L. T.* 136, *C. A.*

286. — Attacking voluntary liquidator—Pending application for removal.]—In a voluntary winding up a shareholder took out a summons asking for the removal of the voluntary liquidator from office, & filed an affidavit stating what he alleged to be the facts justifying the application. Before the summons came on for hearing he issued a circular to the other shareholders, in substance repeating what he had stated in the affidavit, & asking them to support his application. The liquidator then served notice of motion for an injunction to restrain the issuing of the circular or any other like document on the ground that it was a contempt of ct.:—*Held*: the circular could not in any way interfere with or prejudice the due trial of the matter, & was not a contempt of ct.—*Re* NEW GOLD COAST EXPLORATION CO., [1901] 1 *Ch.* 860; 70 *L. J. Ch.* 355; 17 *T. L. R.* 312; 8 *Mans.* 296.

Obstruction of receivers, liquidators & sequestrators.]—*See* Sect. 4, sub-sect. 4, *post*.

287. Publication of petition containing charges of fraud—Before hearing.]—A petition for winding up a co. containing charges of fraud against the directors, was published *in extenso* in a newspaper, before the hearing of the petition:—*Held*: the publishers of the newspaper had committed a contempt of ct., & would be ordered to pay the costs of a motion to commit.—*Re* CHELTENHAM & SWANSEA RAILWAY CARRIAGE & WAGON CO. (1869), *L. R.* 8 *Eq.* 580; 38 *L. J. Ch.* 330; 20 *L. T.* 169; 34 *J. P.* 3; 17 *W. R.* 463.
Annotations:—Apld. *Robson v. Dodds* (1869), 20 *L. T.* 941; *Howdon v. Russell* (1877), 46 *L. J. Ch.* 414. *Reid. Re* Crown Bank, *Re* O'Malley (1890), 63 *L. T.* 304.

288. Circulation of evidence given or to be given—Relating to pending inquiry.]—In a

voluntary winding up a contributory's petition for a supervision order was dismissed on demurrer. On an application by him under Cos. Act, 1862 (c. 89), s. 115 for a summons to examine the liquidator:—*Held*: it would be a gross contempt of ct. for appct. to circulate amongst the shareholders any statement of evidence given or to be given relating to the pending inquiry.—*Re* SIR JOHN MOORE GOLD MINING CO. (1877), as reported in 37 *L. T.* 242.

289. Premature publication of examination by liquidator—Under Companies Act, 1862 (c. 89), s. 115.]—Examinations under sect. 115 of the above Act, are intended for the information of the liquidator, & it is a contempt of ct. to publish prematurely the proceedings thereon.

An action was brought by a co. in liquidation against several debts, one of whom, *L.*, was examined under sect. 115 of the above Act. A newspaper published an account of an interview held with *L.*, containing statements purporting to be made by her of what occurred at her examination. The printer & publisher was ignorant of the contents of the article, but did not disclose the name of the writer. Upon motion to commit the printer & publisher for contempt:—*Held*: he was responsible for the contempt, & ought to pay the costs of the motion.—*Re* AMERICAN EXCHANGE IN EUROPE, LTD., *AMERICAN EXCHANGE IN EUROPE, LTD. v. GILLIG* (1889), 58 *L. J. Ch.* 706; 61 *L. T.* 502; 5 *T. L. R.* 721.

290. Article instigated by petitioning creditor.]—Comments were made in a newspaper on a pending petition by a shareholder to wind up a banking co. Previously to the presentation of the petition a series of articles calling in question the conduct of the directors had appeared in the newspaper. The ct. found that the articles had been instigated by the petitioning shareholder. On motion to commit the publisher of the newspaper for contempt of ct. he was ordered to pay a fine & costs.—*Re* CROWN BANK, *Re* O'MALLEY (1890), 44 *Ch. D.* 649; 59 *L. J. Ch.* 767; 63 *L. T.* 304; 39 *W. R.* 45.
Annotations:—Expld. *Yorkshire Provident Assce. v. Gilbert & Rivington* (1894), 11 *T. L. R.* 143. *Consd.* *Oppenheim v. Mackenzie* (1898), 42 *Sol. Jo.* 748. *Reid. Re* New Gold Coast Exploration Co., [1901] 1 *Ch.* 860.

291. Attempt to procure voluntary winding up—When compulsory proceedings pending.]—When a petition is pending for the winding up of a co. it is a contempt of ct. to issue a circular to the shareholders of the co. containing misrepresentations with the intent to obtain a resolution of the co. for the voluntary winding up thereof, & thereby mislead the ct. as to the real view of the shareholders & prevent a compulsory winding-up order being made.—*Re* PARSONAGE (SEPTIMUS) & CO., [1901] 2 *Ch.* 424; 70 *L. J. Ch.* 706; 84 *L. T.* 866; 49 *W. R.* 700; 17 *T. L. R.* 617; 45 *Sol. Jo.* 655.

SUB-SECT. 4.—PUBLICATIONS AND COMMENTS AFTER JUDGMENT OR VERDICT.

292. General rule.]—*DUNN v. BEVAN, BRODIE v. BEVAN*, No. 153, *ante*.

293. —.]—*Re* DE SOUZA (1888), *Times*, Dec. 3.

294. Publishing reflections upon court.]—On rule to show cause, why an attachment should not be granted against *M. & D.* for publishing a libel

PART IV. SECT. 3, SUB-SECT. 4.

294 i. Publishing reflections upon court—After judgment—Before rule for

*new trial.]—*The proprietors of a newspaper, debts, in a libel action, on the day following that in which a verdict was given against them, published of

the judge that the summing-up was listened to with amazement & the verdict was received in silence & that "debts. had only one appeal to the

upon the proceedings of the ct. in a late trial of L., it appeared that M.'s husband kept a pamphlet shop, & one day in his absence V. came & asked her whether she had "Lady L.'s case". The woman did not know it was in the shop, but upon looking into a drawer of papers she found it. She knew nothing of the contents. V. would have bought it of her, but she refused to sell it him, though she told him he might read it, which he accordingly did:—*Held*: the rule would be discharged as to her, because there did not appear to be any publication by her.—ANON. (1731), 2 Barn. K. B. 13; 94 E. R. 345.

295. Comments misrepresenting evidence—After verdict—When leave to move for a new trial granted—Before expiry of time for appealing.]—Where plff. had obtained a verdict, leave being reserved to deft. to move for a new trial, the ct. would not consider the action to be still pending so as to grant an attachment for contempt against an agent for deft. who distributed printed comments on the trial, though those comments misrepresented the evidence given, & the time within which deft. might move for a new trial had not expired.—METZLER v. GOUNOD (1874), 30 L. T. 264, D. C.

Innovation:—*Re*fd. Dunn v. Bevan, Brodie v. Bevan, [1922] 1 Ch. 276.

296. —.] —DUNN v. BEVAN, BRODIE v. BEVAN, No. 153, ante.

297. Publication of comments—After action settled by consent.]—KELLY & CO. v. POLE (1895), 11 T. L. R. 405.

Innovation:—*Consd* Dunn v. Bevan, Brodie v. Bevan, [1922] 1 Ch. 276.

298. Lunacy proceedings—Publication of reports of doctors.]—A reception order having been made against a person under Lunacy Act, 1890 (c. 5), proceedings were taken under sect. 49 of the Act for the examination of the patient by two medical practitioners appointed by the Comrs. in Lunacy with a view to his discharge. Reports were made by two medical practitioners under the sect., but the comrs. refused to discharge the patient. A newspaper subsequently published the reports in an article commenting on the detention of the patient. A day before the publication of the reports an application was made under sect. 116 of the Act for the appointment of a receiver of the patient's property during his detention. Neither the publisher nor editor of the newspaper knew of these proceedings under sect. 116, nor did the article discuss them. Upon an application to commit for contempt of ct. in publishing the reports of the doctors & the article:—*Held*: (1) as the proceedings under sect. 49 were concluded it

was not a contempt of ct. to publish the reports & the article; (2) as to the pending proceedings under sect. 116, there was no evidence that resp. knew of those proceedings, & they were therefore not guilty of contempt.—*Re* TOWNSEND (MARQUIS) (1906), 22 T. L. R. 311, C. A.

See, further, LUNATICS & PERSONS OF UNSOUND MIND.

SUB-SECT. 5.—PUBLICATIONS CONTRARY TO ORDER OF COURT.

299. Order against publication before close of trial.]—The publication of what passed on the trial of prisoners indicted for the same offence at a ct. of general gaol delivery, after an order had been promulgated by the ct. prohibiting publication until all the trials should be concluded, is a contempt of ct. A ct. of general gaol delivery has jurisdiction to make such orders; & the Ct. of Exch. refused to grant a rule *nisi* for the discharge of a party from such a fine, on an application made to them for that purpose, after it had been estreated into the Exch. on the ground of the illegality of the proceeding, on the ground that the fine might legally be imposed.—*Re* CLEMENT (1822), 11 Price, 68; 147 E. R. 404.

Publication of or comments on proceedings heard in camera.]—*See* Sub-sect. 6, *post*.

SUB-SECT. 6.—PUBLICATION OF AND COMMENTS ON PROCEEDINGS HEARD IN CAMERA.

300. Suit for nullity of marriage—Publication of result—With particulars of parties.]—LAWRENCE v. AMBERY (1891), 91 L. T. Jo. 230.

Annotations:—*Ex*pld. *Re* Martindale, [1891] 3 Ch. 193.

*Re*fd. Scott v. Scott, [1912] P. 241.

301. — Publication of evidence after decree nisi—By party in defence of reputation.]—An order was made at the instance of petitioner in a nullity suit, for the hearing of the cause *in camera*. After a decree *nisi* had been pronounced petitioner, through her solr., obtained a transcript of the official shorthand writer's notes of the proceedings at the hearing & sent copies to certain persons in defence of her reputation.

Upon motion by resp. to commit for contempt of ct. petitioner & her solr. for publishing copies of this transcript, in contravention of the order directing that the cause should be heard *in camera*, petitioner & her solr. were found guilty of a contempt of ct. & ordered to pay the costs of the motion. An appeal from this order was dismissed as incompetent:—*Held*: (1) the order to hear

jury, though plff. had two" & that "at the beginning of the case it became evident that defts. had a battle to fight which could not be terminated in that ct." & other observations disparaging the judge. Six days afterwards the same persons published in another newspaper, owned by them, extracts from various newspapers condemnatory of the judge & of the jury. Two days after the publication of these extracts they filed a memorandum of a rule *nisi* for a new trial:—*Held*: the comments were a contempt of ct.—*Re* ECHO & SYDNEY MORNING HERALD NEWSPAPER (1883), 4 N. S. W. L. R. 237.—AUS.

h. Criminal proceedings—Publication of article after conviction—Before judgment.]—An article in a newspaper tending to prejudice the public against a prisoner, written after his conviction but before final judgment is a contempt.—*Ex* p. HOVELL (1869), 8 N. S. W. S. C. R. 163.—AUS.

k. —.] —Re BENNETT (1876), 14 N. S. W. S. C. R. 33.—AUS.

1. Comments containing fair criticism—After judgment—While time for appeal had not expired.]—An action in the sheriff ct. was dismissed as irrelevant. Before a note of appeal was lodged & while the time for appealing was still running a newspaper article commented adversely on the sheriff's decision & characterised the judgment as "a decision which cuts at the root of the purity of our civic administration" & asked whether it was "to be acquiesced in & become the standard of conduct & morals" for resps. Pursuer appealed from the decision & resps. brought the article to the notice of the ct.:—*Held*: as at the time of publication the matter was no longer *sub judice* in the sheriff ct. & as the article was not disrespectful to the sheriff but contained only fair criticism of the state of the law as laid down by him the article was not one of which

the ct. should take notice.—GLASGOW COURTS v. HEDDERWICK & SONS, [1918] S. C. 639.—SCOT.

m. Where order for new trial.]—Though after verdict it is no contempt to comment on an action, yet the granting of a rule *nisi* for a new trial revives proceedings, & the ct. will then treat comments upon an action as a contempt.—MCASSEY v. BELL, 2 J. R. 55, 158.—N.Z.

PART IV. SECT. 3, SUB-SECT. 5.

n. Order against publication of evidence.]—On a criminal trial an order was made forbidding publication of the evidence. Deft., with full knowledge of the order, published in a newspaper, of which he was manager & editor, an account of the subject-matter of the information, stating that his information came from a purely outside source:—*Held*: the publication was a deliberate contempt of ct.—R. v. MCKINNON (1909), 80 N. Z. L. R. 884.—N.Z.

Sect. 3.—Speeches, writings and acts tending to defeat the ends of justice: Sub-sect. 6. Sect. 4: Sub-sects. 1, 2, 3, 4, 5, 6 & 7.]

in *camerâ* was made without jurisdiction, (2) the order, assuming there was jurisdiction to make it, did not prevent the subsequent publication of the proceedings, provided the publication was made in good faith & without malice, (3) the order to pay costs was not a judgment in a "criminal cause or matter" within Jud. Act, 1873 (c. 66), s. 47, so that no appeal would lie from it.

(4) If it be the law that disobedience of the order in itself constitutes a crime, then this result seems necessarily to follow, that all orders of ct. punishing persons in any way for disobedience of this kind cannot be reviewed in the Ct. of Appeal inasmuch as each of them would have been made in "a criminal cause or matter" within the meaning of Jud. Act, 1873 (c. 66), s. 47 (LORD ATKINSON).

(5) Lord Moulton, in his judgment in the Ct. of Appeal in this case, lays down in the following passage, what, in my opinion, is the true & sound principle of the law: "It is only the Legislature that can render criminal an act which is not so by the common law of the land. An order of the ct. in a civil action or suit creates an obligation upon the parties to whom it applies, the breach of which can be & in general will be punished by the ct., & in proper cases such punishment may include imprisonment. But it does no more. It does not make such disobedience a criminal act, & therefore it is that the Ct. of Appeal has consistently & without any exception held that orders punishing persons for disobedience to an order of the ct. are subject to appeal" (LORD ATKINSON).

(6) It is very necessary, indeed, to make, in the matter of contempts of ct., clear distinctions. One has, for instance, to distinguish acts external to the administration of justice & truly subversive of it. These are essentially of a criminal character. They tend to prejudice a party to a suit in the eyes of the public, the ct., or the jury, or to intimidate witnesses, or interfere with the course or achievement of justice in a pending action. One has also to distinguish acts, also essentially criminal in their nature, acts of disturbance, or riot, which prevent the business of a ct. of justice being duly or decorously conducted. In both of these cases a ct. can protect its administration & all those who share or are convened to its labours, & in both cases the authors of the prejudice or intimidation, on the one hand, or the participators in the disturbance or riot, on the other, are guilty of a contempt, & a ct. of justice can protect itself against these things both by suppression & by punishment (LORD SHAW).—SCOTT v. SCOTT, [1913] A. C. 417; 82 L. J. P. 74; 109 L. T. 1; 20 T. L. R. 520; 57 Sol. Jo. 498, H. L. Annotations:—As to (1) *Distd.* *Ex p. Norman* (1915), 85 L. J. K. B. 203. *Foll.* *R. v. Lewes Prison. Ex p. Doyle*, [1917] 2 K. B. 254. *Reid.* *Cleland v. Cleland*, *Cleland v. Cleland & McLeod* (1913), 109 L. T. 744; *Moosbrugger v. Moosbrugger*, *Moosbrugger v. Moosbrugger & Martin* (1913), 29 T. L. R. 658; *Norman v. Mathews* (1916), 85 L. J. K. B. 857; *Re Stevenson*, [1918-19] B. & C. R. 106. As to (3) *Reid.* *R. v. Manchester Local Profiteering Committee, Ex p. L. & Y. Ry.* (1920), 89 L. J. K. B. 1089; *Wilson v. L. & Y. Ry.* (1920), 36 T. L. R. 412.

See, further, HUSBAND & WIFE.

302. Proceedings connected with ward of court.]—An injunction having been granted restraining H. from holding communication with a female ward of ct., further proceedings took place before

the judge in *camerâ*, H. being present. On the same day the S. newspaper published a paragraph that on that day a romantic story had been unrolled before North, J., who sat in private. The name of the lady was given, & the object of the proceedings. This paragraph had been furnished by P., the information having been supplied to him by H. The next day a similar paragraph appeared in a paper called M., but it was not stated that the proceedings were in private. The paragraph in M. was afterwards copied into two other newspapers. The next friend of the ward moved to commit for contempt of ct. the publishers of the four newspapers, H. & P. The publisher of M. swore that he did not know that the proceedings were not in open ct.:—*Held*: (1) the publication in the S. was a contempt, but not a serious one, & the ct., being satisfied that it was unintentional, would consider that justice would be met by ordering the publisher & H. respectively to pay the costs of the respective motions to commit them; (2) the motions to commit P. & the publishers of the other newspapers were vexatious & an abuse of the process of the ct., & must be refused with costs.—*Re MARTINDALE*, [1891] 3 Ch. 193; 64 L. J. Ch. 9; 71 L. T. 468; 43 W. R. 53; 10 T. L. R. 670; 8 L. 729.

Annotations:—As to (1) *Consd. Scott v. Scott*, [1912] P. 211.

Reid. *Scott v. Scott*, [1913] A. C. 417.

Publication contrary to order of court.]—See Sub-sect. 5, ante.

SECT. 4.—OBSTRUCTING OFFICERS OF THE COURT.

SUB-SECT. 1.—ADMIRALTY OFFICERS OR MARSHALS.
See ADMIRALTY, Vol. I., p. 161, Nos. 702-704, pp. 163, 164, Nos. 731, 732, 734, 736, 737.

SUB-SECT. 2.—BANKRUPTCY MESSENGERS.

303. Threats of violence—Contemptuous language.]—(1) An indemnity given against the consequences of a contempt, involves the party giving it.

(2) The messenger under a commission of bkpcy. was put out of possession of property on board a ship, by threatening to throw him overboard, the parties also using contemptuous language:—*Held*: the parties would be ordered to give security for answering bkpt.'s interest.—*Ex p. DIXON* (1803), 8 Ves. 104; 32 E. R. 291, L. C.

304. Assault.]—Commitment for contempt in assaulting the deputy messenger in discharge of his duty.—*ELLIOT v. HALMARACK* (1816), 1 Mer. 302; 35 E. R. 686, L. C.

305. Forcible dispossession—Subsequent restoration.]—A party took forcible possession of a bkpt.'s effects whilst in the custody of the messenger, an officer of the ct., but found he had done wrong, & gave up the property to the messenger. On a petition to commit him for contempt:—*Held*: he must pay the costs of the petition.—*Re PROUD*, *Ex p. FLETCHER* (1841), 2 Mont. D. & De G. 129, Ct. of R.

SUB-SECT. 3.—PROCESS SERVERS.

306. Assault of.]—Attachment against debt & a *subpœna* against one supposed to beat the server.—*ROVE v. WEST* (1558), Cary, 38; 21 E. R. 21.

PART IV. SECT. 4, SUB-SECT. 3.

306 i. *Assault of—Resisting service.]*

—*PEYTON v. M'NAMARA* (1828), 1

Ir. L. Rec. 1st Ser. 181.—*IR.*

306 ii. — *After service.]* *CAR-*

PENTER v. MURTAGH (1858), 8 I. C. L. R. App. iii.—*IR.*

307. —. —.]—Where deft. to a bill in equity struck *plff.* when serving the *subpoena* upon him :—*Held* : an attachment should be awarded against him to appear & be examined on interrogatories touching the contempt.—*RUFFIN v. HEYWARD* (1584), *Ch. Cas. in Ch.* 175 ; 21 E. R. 102.

308. —. —.]—*OSBORNE v. TUTHELL* (1583), *Ch. Cas. in Ch.* 168 ; 21 E. R. 98.

309. —. —.]—Attachment awarded against deft. for an assault on the server of a *subpoena* to a bill in equity.—*GILES v. LACKINGTON* (1581), *Ch. Cas. in Ch.* 177 ; 21 E. R. 103.

310. —. —.]—On an application, without notice, to commit deft. for a contempt in abuse of the process of the ct. :—*Held* : deft. would be ordered to be committed, unless he showed cause to the contrary on personal notice, for beating, etc., the person who served the process.—*MORGAN v. JONES* (1745), cited in *Dick*. 91 ; 21 E. R. 202, L. C. *Annotation* : *Reid. Ex p. Van Sandau* (1846), 1 Ph. 605.

311. —. —.]—On an application, without notice, to commit deft. for a contempt, in making the person, who served him with a *subpoena* out the same, & otherwise ill-treating him :—*Held* : deft. would be ordered to stand committed, unless cause were shown.—*WILLIAMS v. JOHNS* (1773), *Dick*. 477 ; 21 E. R. 355, L. C.

312. —. —.]—On a motion to commit a party for a contempt, in assaulting a person serving the process of the ct., the Ct. of Ch. will commit the contemner, notwithstanding he positively & circumstantially denies the assault. The ct., in such a case, will look into all the affidavits, & see on which side the truth lies.—*EMERY v. BOWEN* (1836), 5 L. J. Ch. 319.

313. —. —.]—*WHITWORTH v. DUNCAN* (1893), *Times*, Jan. 11, D. C.

314. —. —.]—*After service.* Deft. having been served with common process, collared & violently shook the officer, & ordered him to quit his presence :—*Held* : this, without disclosing more of the circumstances, did not necessarily amount to a contempt of the ct. & obstruction of its process, for which they would grant an attachment.—*ADAMS v. HUGHES* (1819), 1 *Brod. & Bing.* 21 ; 129 E. R. 632.

315. *Imprisonment of.*—A boy served a *subpoena* upon deft., for which the boy was apprehended, & imprisoned : *Held* : an attachment should be awarded against deft.—*DASTOINES v. APPRICE* (1580), *Cary*, 91 ; 21 E. R. 49.

316. *Abuse of.*—*BARKER v. SHEPHEARD* (1633), *Toth.* 102 ; 21 E. R. 136.

317. —. —.]—Upon motion two resps. were committed to prison for violent & abusive language towards a person serving the process of the ct.—*PRICE v. HUTCHISON* (1870), L. R. 9 Eq. 534 ; 18 W. R. 204.

318. —. —.]—*Speaking contemptuously of court.*—For contemptuous words spoken of the ct. when a rule of court is being served, attachment goes without a rule to show cause.—*ANON.* (1711), 1 *Salk.* 81 ; 91 E. R. 79.

Annotations :—*Fold.* R. v. Jones (1719), 1 *Stra.* 185. *Reid.* *Miller v. Knox* (1838), 4 *Bing. N. C.* 571.

319. —. —.]—A rule *nisi* was made for an attachment against deft. for speaking contemptuous words of the ct. at the time he was served with a writ of privilege.—*GILES v. VENSON* (1728), 1 *Barn. K. B.* 56 ; 94 E. R. 39.

320. *Treating process contemptuously.*—Dft.

having treated the process of the ct. contemptuously, an attachment went against him without a rule to show cause.—*R. v. JONES* (1719), 1 *Stra.* 185 ; 93 E. R. 462.

321. *Destruction of process.*—Dft. on being served with a copy of a *capias*, tore it in pieces, & threw it at the officer :—*Held* : this did not amount to a contempt of ct. for which an attachment might be granted.—*MYERS v. WILLS* (1820), 1 *Moore*, C. P. 147.

322. *Snatching original writ.*—Mere violent snatching an original writ of summons from the person serving a copy of it is not a contempt of the process of the ct. *WEEKS v. WHITELY* (1835), 3 *Dowl.* 536 ; 1 *Har. & W.* 218.

323. *Refusal of facilities for service—On prisoner—By governor of prison.*—The governor of a prison, in compliance with an order of the visiting justices, refused to allow the process of the ct. to be served upon a prisoner undergoing a criminal sentence :—*Held* : a rule *nisi* for an attachment against the governor would be granted, on the condition that the rule was not to be served or acted upon, unless he persisted in refusing to allow service.—*DANSON v. LE CAPELAIN & STEELE* (1852), 7 *Exch.* 667 ; 21 L. J. Ex. 219 ; 155 E. R. 1116 ; *sub nom.* *DAWSON v. DUCHATELET*, 16 J. P. Jo. 309.

324. —. —.]—*On lunatic By asylum keeper.*—The keeper of an asylum refused to allow service of a writ of summons on a lunatic under his charge, or to bring it to his notice : *Held* : a rule *nisi* for an attachment against him for obstructing the proceedings of the ct. would be granted.—*DENISON v. HARDING* (1867), 15 W. R. 346.

325. —. —.]—*On employees By employer.*—Although it is the moral duty of a private inquiry agent to afford all reasonable facilities for the service of *subpoenas* upon his employees in a case in which they have been professionally engaged, he is not liable to attachment, unless he uses actual obstruction to prevent his employees being served.—*WYLAM v. WYLAM & ROLLER* (1893), 69 L. T. 500.

SUB-SECT. 1.—RECEIVERS, LIQUIDATORS AND SEQUESTRATORS.

Obstruction of receivers.—*See RECEIVERS.*

Obstruction of liquidators.—*See COMPANIES.*

Obstruction of sequestrators.—*See EXECUTION.*

SUB-SECT. 5.—SHERIFFS AND SHERIFFS' OFFICERS. *See SHERIFFS & BAILIFFS.*

SUB-SECT. 6.—SOLICITORS. *See SOLICITORS.*

SUB-SECT. 7.—OTHER OFFICERS.

326. *Deputy registrar—Assaulting.*—*Plff.* assaulted the deputy registrar of the ct. :—*Held* : he would be committed to prison for the contempt, & an attachment would be awarded against a party who was present when the assault was

321i. *Destruction of process.*—*JONES v. REYNOLDS* (1838), *Craw. & D.* Abr. C. 139.—*IR.*

PART IV. SECT. 4, SUB-SECT. 7.
o. *Tipstaff—Assaulting.*—*MAUNCEIL J.*—VOL. XVI.

v. MALONY (1824), *Rowe* 670.—*IR.*
p. *Officer of Bankruptcy Court—Auctioneer—Interference with sale.*—An auctioneer employed by the assignees of bkpt., for the purpose of auctioning his goods, is an officer of

the Ct. of Bkcy. : & interference with him in such auction, for the purpose of preventing bidders, or depreciating the goods, constitutes contempt of ct. —*Re MURPHY* (1877), 11 L. T. 43.—*IR.*

Sect. 4.—Obstructing officers of the court: Sub-sect. 7.
Sect. 5: Sub-sects. 1, 2 & 3. Sect. 6.]

committed for abetting pltf.—**LOUIS v. GOLDINGHAM** (1650), *Sanders' Chancery Orders*, 246.

327. Arbitrators—Hindering award by.]—A submission to arbn. was by rule of ct., & after the arbitrators had made some progress in the matter the party came & snatched away the papers, & so hindered further proceedings:—*Held*: an attachment would lie.—**DAVILA v. DALMANER** (1702), 7 Mod. Rep. 8; 1 Salk. 73; 87 E. R. 1060.

328. Commissioners—Refusal to assist execution of writ of rebellion—By subjects of Crown.]—**MILLER v. KNOX**, No. 3, *ante*.

SECT. 5 — OBSTRUCTING PARTIES TO OR PERSONS CONNECTED WITH THE PROCEEDINGS.

SUB-SECT. 1.—PARTIES TO PROCEEDINGS.

Misconduct sedente curiâ.] See Sect. 2, sub-sect. 1, *ante*.

329. Arrest of party.] Deft. was sued in an action for battery, & when the jury had gone from the Bar deft. caused pltf. to be arrested in the King's Bench for a battery done to him by pltf. before:—*Held*: this was a contempt, & ignorance of the law was no excuse.—**LEA'S CASE** (1586), *Couldsb.* 33; 75 E. R. 976.

330. — On way to court.]—It is a contempt knowingly to procure the arrest of persons going to ct. to plead to an indictment.—**GARIBALDO v. CAGNONI** (1704), 6 Mod. Rep. 90; 87 E. R. 848.

331. — Attending arbitration proceedings.]—Attachment was ordered for arresting pltf. while attending arbitrators under a rule of ct., on purpose to prejudice his cause.—**R. v. Hall** (1770), 2 Wm. Bl. 1110; 96 E. R. 655.

332. Threats—Intimidating plaintiff—To take less damages than those awarded.]—An attachment lies for endeavouring to intimidate a pltf., for the purpose of inducing him to take less damages than the jury gave.—**WILLIAMS v. LYONS** (1723), 8 Mod. Rep. 189; 88 E. R. 138.

333. — By husband to induce wife to put in untrue answer.]—Where a husband by menaces prevails on a wife to put in an untrue answer, he may be punished for a contempt.—*Ex p.* **HALSAM** (1740), 2 Atk. 50; 26 E. R. 427.

334. — To prosecutor.]—Attachment was ordered against one for threatening a prosecutor with danger of being hanged.—**R. v. CARROL** (1711), 1 Wils. 75; 95 E. R. 500.

*Annotation:—***Refd.** **Webster v. Bakewell** R. D. C. (1916), 60 Sol. Jo. 307.

335. — Threatening letter—By plaintiff to defendant.]—A threatening letter was addressed & sent, pending the suit, to deft. by pltf.:—*Held*: this was a contempt of ct., upon which to found an order for committal.—**SMITH v. LAKEMAN** (1856), 26 L. J. Ch. 305; 28 L. T. O. S. 98; 2 Jur. N. S. 1202.

*Annotations:—***Expld.** *Re* **London Flour Co.** (1868), 17 L. T. 636. **Fold.** **Bromilow v. Phillips** (1891), 40 W. R. 220. **Distd.** **Webster v. Bakewell** R. D. C. (1916), 60 Sol. Jo. 307.

336. — — — — —.]—**BROMILOW v. PHILLIPS**, No. 347, *post*.

PART IV. SECT. 5, SUB-SECT. 1.

a. Insulting party—Or his counsel—Attending in master's office.]—It is a contempt of ct. to insult a suitor or his counsel while attending in the master's office.—**FRENCH v. FRENCH** (1824), 1 Hog. 138.—**IR**

335 i. Threats—Threatening letter—Exposure of party.]—Deft. in an action depending in ct. wrote a private letter to pursuer sending her a copy of the record, & telling her that he intended to put the oath of calumny to her as soon as the forms of ct. allowed; & she must bear in mind that many

337. — — — Exposure of party.]—It is a contempt of ct. to write a letter threatening, if a petition is not withdrawn, to issue a publication respecting petitioner in a pending suit.—*Re* **MULOCK** (1804), 3 Sw. & Tr. 599; 33 L. J. P. M. & A. 205; 13 W. R. 278; 164 E. R. 1407; *sub nom.* *Re* **MULOCK, Ex p. CHETWYND**, 10 Jur. N. S. 1188. *Annotation:—***Distd.** **Webster v. Bakewell** R. D. C. (1916), 60 Sol. Jo. 307.

338. — — — — —.]—**SHARLAND v. SHARLAND** (1885), 1 T. L. R. 492, D. C.

339. — — — — —.]—**PAVLOVA v. HARVEY** (1914), *Times*, Nov. 27.

340. — — — By solicitor of landlord to tenant—Tenant's action against local authority.]—The yearly tenant of a cottage & land, adjoining a highway & forming part of a settled estate, issued a writ against the local authority for an injunction to restrain an alleged trespass on his land. The solr. of the tenant for life of the estate wrote to the local authority with a view to arrange the matter, & at the same time wrote to the tenant that the tenant for life required him to withdraw the writ, & that, if he did not comply, his tenancy would be determined. On motion by the tenant to commit the solr. for contempt of ct. for sending him letters calculated to deter him from prosecuting the action & to prevent the administration of justice:—*Held*: the solr. had not committed a contempt of ct.—**WEBSTER v. BAKEWELL RURAL DISTRICT COUNCIL**, [1916] 1 Ch. 300; 85 L. J. Ch. 326; 114 L. T. 515; 80 J. P. 251; 32 T. L. R. 306; 60 Sol. Jo. 307; 14 L. G. R. 547.

341. Serving process upon party—Attending proceedings.]—Merely serving process upon a party attending his cause in ct. is a contempt.—**COLE v. HAWKINS** (1738), *Andr.* 275; 2 Stra. 1091; 95 E. R. 396.

*Annotations:—***Consd.** **Newton v. L. B. & S. C. Ry.** (1819), 19 L. J. Q. B. 12. **Expld.** **Poole v. Gould** (1856), 1 H. & N. 99. **Refd.** **Hare v. Hyde** (1851), 15 Jur. 315.

342. Preventing infant obeying order of court to convey.]—(1) It is a contempt to interfere & prevent an infant obeying the order of the ct. to convey.

(2) Where an order is made that in a certain time after personal service thereof on an infant, he shall execute a deed, & on his neglecting to do so, an attachment is moved for, the affidavit in support of the motion must state not only that a true copy of the order was served on the infant, with notice that disobedience would be a contempt, but the original must be produced & shown at the same time.—**THOMAS v. GWYNNE, THOMAS v. THOMAS** (1845), 8 Beav. 312; 5 L. T. O. S. 327, 342; 50 E. R. 123.

343. Wife molesting husband—After decree of judicial separation.]—A husband had obtained a decree of judicial separation against his wife, & after such decree, the wife molested her husband:—*Held*: the ct. had no jurisdiction to attach her for contempt for such molestation.—**SMITH v. SMITH** (1889), 59 L. J. P. 15.

SUB-SECT. 2.—WITNESSES.

See, generally, **CRIMINAL LAW & PROCEDURE.**

Abusing, assaulting or threatening witnesses in face of court.]—*See* Sect. 2, sub-sect. 3, *ante*.

things stated by her on record were utterly false, & reminding her of the consequences of a false oath:—*Held*: this was an unwarrantable interference with the administration of justice, & a contempt of ct.—**PATERSON v. KILGOUR** (1865), 3 Macph. (Ct. of Sess.) 1119; 38 Sc. Jur. 5.—**SCOT.**

344. Intimidation of.]—PARTRIDGE v. PART-
RIDGE (1639), Toth. 40; 21 E. R. 117.

345. —.]—ROWDEN v. UNIVERSITIES CO-
OPERATIVE ASSOCN., LTD. (1881), 71 L. T. Jo. 373.

346. — Threatening language.]—The use of
threatening language to a person who is likely to
be a witness in a suit, with intention of preventing
that person from coming forward to give evidence,
is a contempt of ct.—SHAW v. SHAW (1861), 2
Sw. & Tr. 517; 31 L. J. P. M. & A. 35; 6 L. T.
477; 8 Jur. N. S. 141; 104 E. R. 1097.

*Annotations:—*Apld. Bromilow v. Phillips (1891), 8 T. L. R.
168. *Refd.* Re Mulock (1864), 3 Sw. & Tr. 599.

347. —.]—Motion to commit plff. for
contempt of ct. in endeavouring to intimidate a
witness in this action, & to deter deft. from calling
the witness & from continuing to defend the action
& prosecute his counterclaim by threatening
letters, & for costs as between solr. & client:—
Held: the commitment order must be made, but
without costs as between solr. & client.—BROMILOW
v. PHILLIPS (1891), 40 W. R. 220; 8 T. L. R. 168;
30 Sol. Jo. 121.

*Annotation:—*Consd. Welby v. Still (1892), 66 L. T. 523.

348. Arrest of.]—The ct. was moved to dis-
charge C. who was arrested as he was attending
the ct. to give testimony as a witness in a cause,
& for an attachment against the parties that
arrested him:—*Held*: a *supersedeas* would be
granted & the parties would be ordered to show
cause why an attachment should not be granted
against the persons who arrested him.—CULLIN'S
CASE (1653), Sty. 395; 82 E. R. 807.

349. —.]—If a witness coming to testify in a
cause in Middlesex be arrested in London by one
knowing the cause he hath no remedy but by
habeas corpus to examine & deliver him thereby,
but if there be any contempt by the officer, etc.,
an attachment may afterwards be awarded against
him, for they are as well to have privilege as the
parties.—VANDEVELDE v. LLEWELIN (1662), 1
Keb. 220; 83 E. R. 910.

*Annotations:—*Refd. Cameron v. Lightfoot (1778), 2 Wm. Bl.
1190; Magnay v. Burt (1843), 5 Q. B. 381.

350. Prevention of service of subpoena on.]—
Deft.'s niece, who resided with him, was a material
witness for plff., & it appearing to the ct. that
deft. had refused to allow a *subpoena* to be served
upon her, an attachment was granted against him.
—CLEMENT v. WILLIAMS (1836), 1 Hodg. 382; 2
Scott, 814.

*Annotation:—*Distd. Schlesinger v. Flersheim (1845), 2
Dow. & L. 737.

351. — By offer of money.]—To tamper
with a witness in an action & induce her to go away
by an offer of money is a gross contempt of ct. &
an interference with the fair trial of the action.—
LEWIS v. JAMES (1887), 3 T. L. R. 527.

*Annotation:—*Apld. Hubbard v. Woodfield (1913), 57 Sol. Jo.
720.

**352. Suspension from employment—On account
of evidence given.]—**ROWDEN v. UNIVERSITIES CO-
OPERATIVE ASSOCN., LTD. (1881), 71 L. T. Jo. 373.

353. Assault of—In precincts of court.]—
PURDIN v. ROBERTS (1910), 74 J. P. Jo. 88.

SUB-SECT. 3.—JURORS.

**Abusing, assaulting, or threatening jurors in face
of court.]—**See Sect. 2, sub-sect. 3, *ante*.

Breaches of duties by amounting to contempt.]—
See JURIES.

PART IV. SECT. 5, SUB-SECT. 3.

r. Challenge to fight a duel.]—A
brother of a convicted prisoner shortly

after his trial proceeded to the residence
of the foreman of the jury, accused
him of having bullied the jury into
finding the prisoner guilty, & challenged

him to mortal combat:—*Held*: a
contempt of the ct. before which the
trial was had.—R. v. MARTIN (1848),
5 Cox, C. C. 356 IR.

SECT. 6.—STRANGERS TO ACTION OBSTRUCT- ING COURSE OF JUSTICE.

**354. Breaking open property—Sealed under
sequestration order.]—**Plff. had a decree against
deft. for the surplus of the estate of J. H. as
residuary legatee. The process to discover the
estate went so far as a sequestration, & T. H.
was prosecuted on contempt, for that the house
wherein testator's goods were, being secured, &
the trunks by former order locked & sealed, a
smith in disguise broke open the house, that then
the chests were opened, & carried away, & that
T. H. was then there with others.—HARVEY v.
HARVEY (1681), 2 Cas. in Ch. 82; 22 E. R. 857.

355. Defeating party of benefit of award.]—
Upon a rule of reference to arbitrators, they made
an award for plff., & a stranger by contrivance,
defeated the party of the benefit of this award:
Held: it was a contempt of the ct. & an attach-
ment would be granted, for it should not be in
any one's power to defeat the rules of the ct. or
render them ineffectual.—BUTLER'S CASE (1696), 2
Salk. 596; 91 E. R. 504.

*Annotation:—*Refd. Miller v. Knox (1838), 4 Bing. N. C. 571.

**356. Giving indemnity against consequences of
contempt.]—***Ex p.* DIXON, No. 303, *ante*.

357. Breach of injunction General rule.]
P. made oath that B. & others, having notice given
to them of an injunction awarded out of this ct.
against deft., had disobeyed it: *Held*: an attach-
ment would be awarded against them.—LOWEY
v. CRUDGE (1580), Cary, 101; 21 E. R. 51.

358. —.]—SEAWARD v. PATERSON, No.
22, *ante*.

**359. — By agent of party restrained—Know-
ledge of agent.]** Where a receiver is enjoined from
further receiving the ct. will extend the injunction
to his agent & commit him also for a breach of the
order, although he living at a distance in the
country, has not been regularly served with the
injunction, if sufficient circumstances can be
shown to afford fair & satisfactory evidence that
such agent knew of the order.—LEWES v. MORGAN
(1818), 5 Price, 518; 146 E. R. 681.

*Annotation:—*Refd. Seaward v. Paterson, [1897] 1 Ch. 545.

360. —.]—An injunction was granted
against A. restraining him, but not ex-
pressing his servants & agents, from cutting timber.
B., who was A.'s agent, with knowledge of the
injunction, cut the timber:—*Held*: B. might be
committed for the contempt, though not for breach
of the injunction.—WELLESLEY (LORD) v. MORN-
INGTON (EARL) (1818), 11 Beav. 181; 11 L. T. O. S.
286; 50 E. R. 786.

*Annotations:—*Consd. Seaward v. Paterson, [1897] 1 Ch. 545;
Scott v. Scott, [1913] A. C. 417.

**361. — In presence of party restrained—
Tacit consent.]—**Where an injunction has been
served on a person, restraining him from doing a
certain act, & that act is afterwards done in his
presence, & under such circumstances that he will
be considered as aiding & abetting it, the ct. will
commit such person for a breach of the injunction,
although he was not personally actively engaged
in doing the act prohibited nor had employed or
procured the parties who were the actors.—ST.
JOHN'S COLLEGE, OXFORD v. CARTER (1839), 4
My. & Cr. 497; 8 L. J. Ch. 218; 41 E. R. 191,
L. C.

**362. — By successors in office of parties
restrained—Notice on appointment.]—**Defts.,
trustees of a branch of a friendly society, were

Sect. 6.—Strangers to action obstructing course of justice. Sects. 7 & 8: Sub-sects. 1, 2 & 3]

restrained by injunction from dividing certain money among the members of the branch. Shortly afterwards deft. trustees retired, & new trustees were appointed, who, being aware of the effect of the injunction, under an order of the branch society, divided the money among the members, including the old trustees. The ct. considered, on the facts, that the proceedings were an attempt on the part of the branch society & the old & new trustees to avoid the injunction, & a device for disobeying it, in which the new trustees co-operated:—*Held*: the new trustees, as well as the old, were guilty of contempt of ct.—*VERY v. ANDREWS* (1882), 51 L. J. Ch. 414; *sub nom. AVORY v. ANDREWS*, 46 L. T. 279; 30 W. R. 564. *Annotations. Apprvd.* United Telephone Co. v. Dale (1884), 25 Ch. D. 778. *Consd.* Seaward v. Paterson, [1897] 1 Ch. 545. *Scott v. Scott*, [1913] A. C. 417. *Reid*, Bosch v. Simms Manufacturing Co. (1909), 25 T. L. R. 419.

363. Aiding & abetting assault on deputy registrar.] *LOUIS v. GOLDINGHAM*, No. 326, *ante*.

364. Procuring disobedience to order.]—*SMITH v. BOND*, No. 389, *post*.

365. *R. v. BERWICK-ON-TWEED CORPN.* (1815), 9 J. P. Jo. 81.

366. Declining to assist in execution of writ.]—*MILLER v. KNOX*, No. 3, *ante*.

SECT. 7.—INTERFERENCE WITH PERSONS UNDER THE SPECIAL JURISDICTION OF THE COURT.

Wards of court.]—*See* INFANTS & CHILDREN.

Lunatics.]—*See* LUNATICS & PERSONS OF UNSOUND MIND.

SECT. 8.—FORGING, ALTERING OR ABUSING THE PROCESS OF THE COURT.

SUB-SECT. 1.—FORGING OR ALTERING PROCESS.

See, generally, PRACTICE & PROCEDURE.

367. Forging process—Subpoenas.]—*II.* forged & counterfeited subpoenas, & A. bought from *II.* a forged & counterfeited subpoena for £51 13s. 4d. costs in a cause then pending. The Master of the Rolls committed them to prison for contempt.—*Re HUNGERFORD & AYLMER* (1863), *Sanders' Chancery Orders*, 317.

368. — Erasing judge's indorsement on summons—Obtaining order by forgery.]—*Re JACOBS* (1874), *Times*, June 13.

369. Altering process.]—Where the process of the ct. had been altered, an order nisi was made committing to prison the persons guilty of such contempt.—*Re HARDY* (1738), *Sanders' Chancery Orders*, 515, L. C.

370. —.]—*FAWCETT v. GARFORD* (1789), *Oswald on Contempt*, 3rd ed., p. 62.

371. — Filling up writ—After sealing.]—Filling up a writ after it is sealed, is a contempt.—*ANON.* (1704), 6 Mod. Rep. 310; 87 E. R. 1049.

372. — Insertion of larger sum than due—To oust party of bail.]—An attachment does not lie

for inserting a larger sum in the *ac etiam* than is due, in order to oust the party of bail.—*R. v. PEPPER* (1724), 8 Mod. Rep. 227; 88 E. R. 163.

373. — Altering sheriff's warrant.]—Altering a sheriff's warrant is no ground for an attachment, unless an ill use is made of it.—*HALE v. CASTLEMAN* (1716), 1 Wm Bl. 2; 96 E. R. 2.

SUB-SECT. 2.—ABUSING PROCESS.

See, generally, PRACTICE & PROCEDURE.

Breach of duty by persons officially connected with the court or proceedings, *see* Sect. 10, *post*.

374. Prolix proceedings—Former rule.]—*MILWARD v. WEIDEN* (1565), Toth. 101; 21 E. R. 136.

375. Issuing double process.]—An attorney was punished for causing his debtor after being arrested in one ct., to be arrested in another ct. for the same debt, on the ground that he was an attorney of the ct. & more skilful in the law & customs of the ct. than an ordinary person.—*ANON.* (1586), *Gouldsb.* 30; 75 E. R. 974.

376. *]* A judgment was had in an action of debt against S. & M., his bail, was taken in execution. The bail paid part of the debt, being unable to satisfy the whole judgment. Upon payment of this part the debtee, H., made a release to him of the whole debt, judgment & execution, & acknowledged full satisfaction unto him, of the whole judgment, & this to be in full satisfaction & discharge of the whole debt. Afterwards the bail died, & H. sued execution again upon the first judgment against S.:—*Held*: these proceedings were bad & undue, and so done in contempt of ct.—*HIGGINS v. SOMMERLAND* (1614), 2 Bulst. 68; 80 E. R. 965.

377. Falsely pleading infancy.] In an *ejectioe firmæ*, to delay & put off the trial, infancy was assigned & pleaded, but it was found that deft. was of the age of 63 years, & so it appeared to the ct., that he was of full age, & this was but a shift, therefore an attachment was granted against him by the ct.—*LORD v. THORNTON* (1611), 2 Bulst. 67; 80 E. R. 965.

378. False oath as bail.] Persons who fore-swear themselves in justifying bail before a judge are liable to the punishment of wilful & corrupt perjury, & if committed or confessed in ct. may be sentenced immediately.—*ROYSON'S CASE* (1628), *Cro. Car.* 146; 79 E. R. 729.

379. Sheriff inducing recall of writ—Collusion.]—If an infant, as next heir, sue out a writ of appeal, & deliver it to the sheriff, & the sheriff, after guardian appointed, & before the return of the writ, by collusion with the appellee, induce the infant & guardian to recall the writ, & deliver it to them accordingly, it is a contempt of the process of the ct., for which he may be fined, although the ct. is not in possession of the writ until it is returnable, & the guardian may discontinue the appeal.—*STROUT v. TOWLER* (1700), 12 Mod. Rep. 372; *Holt*, K. B. 483; 88 E. R. 1387; *sub nom. R. v. TOLER*, 1 Ld. Raym. 555; *sub nom. TOLER'S CASE*, *Salk.* 176; *Holt*, K. B. 153.

380. Instituting action—To raise prejudice & deceive the court.]—An action, not to determine a right or controversy, but to deceive the ct., & to

PART IV. SECT. 8, SUB-SECT. 2.

a. Issuing servicable process—Without authority.]—*R. v. FRASER* (1833), 3 O. S. 247.—*CAN.*

t —.]—*R. v. THOMPSON* (1824), *Rowe*, 612.—*IR.*

a. Fraudulent use—Of mandamus nisi.]—*Re MCLAY* (1865), 24 U. C. R.

54.—CAN.

b — Of replevin.]—*R.* had been tenant under *B.* of land at an annual rent, but having become largely in arrear, an ejectment was brought, & judgment by default obtained. *B.* was put into actual possession by the sheriff, & saved & got in the crops upon the lands. *R.*,

without having paid the rent due, or the costs of the ejectment, sued out a replevin, under colour of which the sheriff took down a ditch which separated the lands from the high-road, & drew off to *R.'s* house all the corn on the land.—*Held*: *R.* had committed a contempt of ct.—*ROSSITER v. JAMBLESON* (1845), 6 L. T. O. S. 194.—*IR.*

raise a prejudice against a third person, is unlawful, & punishable as a contempt.—*COXE v. PHILLIPS* (1736), *Lee temp. Hard.* 237; 95 E. R. 152.

Annotations :—*Mentd.* Da Costa v. Jones (1778), 2 Cowp. 729; *Good v. Elliott* (1790), 3 Term Rep. 693; *Gilbert v. Sykes* (1812), 16 East, 150.

381. — On behalf of persons of unsound mind—Without order of court.—Proceedings were commenced by a father, appointed by the Ct. of Ch. to act as guardian of his daughter, of full age, & not found lunatic, without the order of the Lord Chancellor:—*Held*: a contempt of the jurisdiction.—*WILKINSON v. WILKINSON* (1845), 4 Notes of Cases, 205.

Annotation :—*Mentd.* Moss v. Moss, [1897] P. 263.

382. — After inquisition.—Every proceeding taken in a suit after inquisition, whether or not a committee has been appointed, is irregular & void & a contempt of the ct. in lunacy.—*BEALL v. SMITH* (1873), 9 Ch. App. 85; 43 L. J. Ch. 245; 29 L. T. 625; 38 J. P. 72; 22 W. R. 121, L. J.J.

Annotations :—*Mentd.* Halfhide v. Robinson (1874), 30 L. T. 216; *Jones v. Lloyd* (1874), L. R. 18 Eq. 265; *Porter v. Porter* (1888), 37 Ch. D. 420; *Howell v. Lewis* (1891), 61 L. J. Ch. 89; *Parham v. Milward*, [1895] 2 Ch. 730; *Re Armstrong*, [1896] 1 Ch. 536; *Didisheim v. London & Westminster Bank*, [1900] 2 Ch. 15; *New York Security & Trust Co. v. Keyser*, [1901] 1 Ch. 666.

See, also, LUNATICS & PERSONS OF UNSOUND MIND.

383. — Against prisoner—Without leave of court.—It is a contempt to charge a prisoner, in execution for a fine, with a civil action without leave of ct.—*ANON.* (1703), 6 Mod. Rep. 88; 87 E. R. 846.

384. Special case—For opinion of court—Erroneous facts stated.—An attorney, without any corrupt or unworthy motives, prepared a special case in order to take the opinion of the ct. upon the will of testator, & suggested several facts which had no foundation:—*Held*: he was guilty of a contempt.—*Re ELISAM* (1824), 3 B. & C. 597; 5 Dow. & Ry. K. B. 389; 3 L. J. O. S. K. B. 75; 107 E. R. 855.

Annotation :—*Mentd.* Gurney v. Gurney (1863), 1 Hem. & M. 413.

385. Affidavit—Scandalous & irrelevant.—The ct. will direct an affidavit in a case of misdemeanour which contains matter both scandalous & irrelevant, to be removed from the files of the ct., & the party who filed it is liable to be visited as for a contempt of ct. *R. v. GREGORY* (1813), 1 Car. & Kir. 228; 2 L. T. O. S. 193; 1 Cox, C. C. 31.

386. — Chicanery in—Liability of counsel.—On a motion to commit M., a barrister & counsel in the case for deft. A., to prison for contempt of ct.:—*Held*: (1) M. had conspired with others to deceive the ct., & it was his duty, when he knew that affidavits were going to be used amounting to chicanery, to disclose the fact to the ct.; (2) M.'s fault did not consist in not throwing up his brief, but in having made himself a party to a fraud by conspiring with others in inducing A. to make these affidavits, which were used to delude the ct.; (3) the ct. had jurisdiction; (4) M. would be ordered to pay the costs of the motion, & be committed to prison until further order.—*LINWOOD v. ANDREWS & MOORE* (1888), 58 L. T. 612.

387. Serving fictitious writ of summons.—*Semble*: the Ct. of C. P. has jurisdiction to commit for contempt a person, though not a party to any cause, who served another with a fictitious writ of summons purporting to issue from the ct.—*Re BANKS* (1845), 4 L. T. O. S. 375.

388. Issuing writ of summons—Without authority of court.—A rule nisi had been obtained for an attachment for issuing a writ of summons without the authority of the ct.:—*Held*: the

rule would be discharged on payment of costs by plff.—*Re CHRISTIE* (1856), 27 L. T. O. S. 67.

389. Causing solicitor to give false address.—Solicitor required to answer under judge's order.]

Semble: a plff. who wilfully causes his attorney to deliver a false address, the attorney having been required by a judge's order, under 2 Will. 4, c. 39, s. 17, to declare the place of plff.'s abode, is guilty of a contempt of ct., & liable to be punished by attachment.—*SMITH v. BOND* (1815), 13 M. & W. 594; 11 L. J. Ex. 111; 1 L. T. O. S. 295; 9 Jur. 20; 153 E. R. 248.

Annotation :—*Refd.* Schlesinger v. Fiersheim (1845), 11 L. J. Q. B. 97.

390. Executing process by undue means.—An application was made for leave to file an information against several persons for a misdemeanour. One of the persons complained of had a writ out of the Common Bench to execute on S., the daughter of prosecutor, but, finding it difficult to serve her, they applied to a justice of peace for a warrant, under a pretence of some stolen goods there concealed. By virtue of that they entered the house & arrested her, but never searched for the goods they had supposed to be stolen:—*Held*: the proper way of proceeding would be to apply to the Ct. of C. B. for an attachment for making use of such undue means to execute the process of the ct. *ANON.* (1758), 2 Keny. 372; 96 E. R. 1214.

391. Defeat of execution—Fraudulent collusion.—

A., the treasurer of a loan society, took securities in his own name. Having ceased to be treasurer, an action was commenced on behalf of the society upon a security so taken, in A.'s name, & prosecuted to execution under an indemnity to A. ordered by the ct. A., colluding with deft., discharged him from the execution:—*Held*: attachment for contempt would be granted against A.—*McGREGOR v. BARRETT* (1818), 6 C. B. 262; 136 E. R. 1251.

392. Issue of execution—After rule nisi obtained by defendant.—On a motion for an attachment for contempt of ct. in plff. issuing execution after a rule nisi to enter a suggestion on the roll under the County Cts. Act, 1846 (c. 95), had been obtained by deft.:—*Held*: a rule nisi would be made.—*PITCHER v. NOKES* (1848), 12 J. P. Jo. 173.

393. Using process to extort money.—It must be plainly understood that applications for contempt of ct. ought not to be regarded in the nature of actions for damages. Such proceedings are analogous to, and in the nature of, criminal informations, which are incapable of settlement (*LORD ALVERSTONE, C.J.*). *R. v. NEWTON* (1903), 67 J. P. 453; 19 T. L. R. 627, D. C.

Annotation :—*Mentd.* *It. v. Parke*, [1903] 2 K. B. 432.

SUB-SECT. 3.—UNAUTHORISED SIGNING OF DOCUMENTS.

394. Signing counsel's name—To exceptions.—Deft. ordered to pay plff. £100 for putting in a scandalous answer, & his solr., who had put in scandalous & malicious exceptions to the master's report, & signed counsel's name to the exceptions without his knowledge, was ordered to pay £20, & committed till payment.—*WHITLOCK v. MARRIOT* (1685), 2 Rep. Ch. 386; Dick. 16; 21 E. R. 695.

395. — To pleadings.—*FAWCETT v. GARFORD* (1789), Oswald on Contempt, 3rd ed., p. 62.

396. — To answers.—A solr. inserted scandalous matter in an answer & put counsel's name thereto without authority:—*Held*: he would be committed & ordered to pay costs.—

Sect. 8.—Forging, altering or abusing the process of the court: Sub-sect. 3. Sects. 9 & 10: Sub-sect. 1, A., B., C. & D.; sub-sect. 2, A. & B. Part V. Sect. 1: Sub-sect. 1, A. & B. (a), (b), (c) & (d) i. & ii.]

BISHOP v. WILLIS (1749), 5 Beav. 83, n.; 49 E. R. 508.

397. — — —.]—*BULL. v. GRIFFIN (1795), 2 Anst. 563; 145 E. R. 967.*

SECT. 9.—UNQUALIFIED OR UNADMITTED PERSONS ACTING AS SOLICITORS.

See SOLICITORS.

SECT. 10.—BREACH OF DUTY BY PERSONS CONNECTED WITH THE COURT OR PROCEEDINGS.

SUB-SECT. 1.—OFFICERS OF THE COURT.

A. Receivers and Sequestrators.

Receivers.] See RECEIVERS.

Sequestrators.]—See EXECUTION.

B. Sheriffs and Bailiffs.

See SHERIFFS & BAILIFFS.

C. Solicitors.

See SOLICITORS.

Disobedience to orders for payment of money.]—See Part V., Sect. 1, sub-sect. 1, B. (c), post; BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1029-1032, Nos. 8414-8434.

Unqualified or unadmitted persons acting as solicitors.]—See SOLICITORS.

D. Other Officers.

398. *Officer of court—Issuing copy of indictment.]—Pltf. & one S. were indicted for forgery &*

acquitted, & the ct. ordered S. only to have a copy of his indictment, but pltf., having also procured a copy, brought an action for malicious prosecution. Qu.: whether deft. could not maintain an action on the case against the officer who had granted a copy of the indictment contrary to the orders of the ct. Semble: such conduct in an officer would be a high contempt of the ct., & punishable accordingly.—JORDAN v. LEWIS (1740), 14 East, 305, n.; 2 Stra. 1122; 104 E. R. 618.

Annotations:—Apprvd. LEGATT v. TOLLERVEY (1811), 14 East, 302. Mentd. Caddy v. Barlow (1827), 1 Man. & Ry. K. B. 275.

399. — — —.]—*If pltf. in an action for malicious prosecution offer to prove at the trial the original record of the indictment & acquittal or a true copy thereof, such evidence must be received, though there were no order of the ct. or fiat of the A.-G. allowing pltf. a copy of such record, but the officer who, without such authority, produces the record or gives a copy of it to the party is answerable for the contempt of ct. in so doing.—LEGATT v. TOLLERVEY (1811), 14 East, 302; 104 E. R. 617.*

Annotations:—Refd. Doe d. Egremont v. Dale (1812), 3 Q. B. 609. Mentd. R. v. Kinglake (1870), 13 W. R. 805.

SUB-SECT. 2.—OTHER PERSONS CONNECTED WITH THE PROCEEDINGS.

A. Barristers.

See, generally, BARRISTERS, Vol. III., pp. 323, 324, Nos. 105, 109, 110.

Abusing jurors.]—See No. 126, ante.

Writing letter tending to defeat the ends of justice.]—See No. 14, ante.

B. Jurors.

See JURIES.

Part V.—Contempt in Procedure.

SECT. 1.—DISOBEDIENCE TO ORDERS FOR PAYMENT OF MONEY.

SUB-SECT. 1.—DEFAULT IN PAYMENT OF A SUM OF MONEY.

A. General Rule—Abolition of Imprisonment for Debt.

See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1021-1023, Nos. 8333-8350 & Debtors Acts, 1869 (c. 62), s. 4, 1878 (c. 54).

400. *“Default in payment of sum of money”—Costs in Divorce Division.]—Matrimonial Causes Act, 1884 (c. 68), s. 2, is retrospective, & therefore the ct. will not now enforce an attachment for non-compliance with a decree for restitution of*

conjugal rights, although the order for the attachment was made before the passing of the Act.

The ct. will not order a party in contempt to be taken into custody under a writ of attachment merely for the purpose of enforcing payment of costs.—WELDON v. WELDON (1885), 54 L. J. P. 60; 52 L. T. 233; 49 J. P. 517; 33 W. R. 427, C. A.

401. — — — *Alimony.]—(1) Non-compliance with orders of the Divorce Div. for the payment of costs & alimony is still a contempt of ct., although since Debtors Act, 1869 (c. 62), the orders cannot be enforced by attachment.*

(2) After such non-compliance it is a matter for the discretion of the ct. whether the party in contempt should be permitted to take a further

PART IV. SECT. 10, SUB-SECT. 1.—D.

c. Officer of court—accepting bribe.]—Any officer of the ct. who asks or accepts a present from any person in whose favour judgment is pronounced by the ct., is guilty of a gross breach of duty & a contempt of ct.—Re ARDOOL (1867), 8 W. R. 32.—IND.

PART V. SECT. 1, SUB-SECT. 1.—A.

d. “Default in payment of sum of money”—Where payment of money may become necessary.—To comply with judgment—R. S. 1887, c. 67, s. 6.]—Above sect., which abolishes process of contempt for non-payment of money payable by a judgment or order, refers to payment as between debtor &

creditor; & debts. who are, by judgment, directed to procure the discharge of an incumbrance wrongfully placed by them on pltf.'s lands may be attached for failure to comply with the judgment although payment of money may become necessary to effect what is required.—BERRY v. DONOVAN (1893), 21 A. R. 14.—CAN.

proceeding in the litigation, & it is material to the exercise of that discretion to consider whether the non-compliance is due to the fault or the misfortune of the party in contempt.

A husband, resp. to a petition for restitution of conjugal rights, failed to comply with orders for costs & alimony, & whilst in default took out a summons, under Divorce Rules, r. 176, to stay the suit. The ct. not being satisfied that resp. was unable to comply with the orders, refused to permit him to proceed.—*LEAVIS v. LEAVIS*, [1921] P. 299; 90 L. J. P. 302; 125 L. T. 28; 37 T. L. R. 578; 65 Sol. Jo. 456.

402. — Order for permanent alimony.—A decree having been made absolute for a divorce on the wife's petition, the husband, as part of the final order, was directed to pay a permanent maintenance to his wife at the rate of £200 a year:—*Held*: the ct. had no power to grant an attachment against the husband for non-payment of arrears of the annuity due under the order.—*DE LOSSY v. DE LOSSY* (1890), 15 P. D. 115; 62 L. T. 701; 38 W. R. 511.

See, further, HUSBAND & WIFE.

— **Construction of words**—Whether applicable to default in finding security for costs.—*See BANKRUPTCY & INSOLVENCY*, Vol. V., p. 1022, Nos. 8315-8348.

Costs of motion for attachment.—*See BANKRUPTCY & INSOLVENCY*, Vol. V., p. 1022, No. 8349.

Order for payment of costs or alimony—Whether "debt" within Debtors Act, 1869 (c. 62), s. 5.—*See BANKRUPTCY & INSOLVENCY*, Vol. V., p. 1031, Nos. 8458-8460.

Default in payment of costs by solicitor.—*See SOLICITORS.*

B. Exceptions to General Rule.

(a) In General.

General nature of exceptions.—*See BANKRUPTCY & INSOLVENCY*, Vol. V., pp. 1021-22, Nos. 8336-8310.

(b) "Default in Payment of Penalty or Sum in Nature of Penalty."

See Debtors Act, 1869 (c. 62), s. 1; R. S. C. Ord. 42, rr. 3, 1, 24; Ord. 11.

403. Not damages in a divorce suit—Against co-respondent.—Damages to the amount of £500 were assessed against co-resp. Subsequently co-resp. was adjudicated a bkpt., & an order was made upon him to pay the damages into the registry unless they were admitted as a debt, payable out of the estate under the bkpcy. The bkpcy. authorities refused to admit the proof tendered by petitioner, on the ground that the damages were still in the disposition of the ct. & the damages remained unpaid:—*Held*: the damages could not be regarded as "a penalty, or sum in the nature of a penalty" so as to warrant the issue of an attachment against co-resp., but the ct. would vary its order by directing payment of the damages to petitioner himself to enable him to prove under the bkpcy.—*PATTERSON v. PATTERSON* (1870), L. R. 2 P. & D. 189; 40 L. J. P. & M. 5; 23 L. T. 508; 19 W. R. 232.

Annotations:—Dhtd. Re Muirhead, Ex p. Muirhead (1876), 2 Ch. D. 22. *Patterson v. Patterson* was a case in which all that was done was for the purpose of enabling the party to prove: whether that ought not to have been done by the Ct. of Bkpcy., if done at all, is a very serious question, & I entertain considerable doubt whether the

Divorce Ct. had the power it assumed to exercise in that case (COCKBURN, C.J.). *Consd. Re O'Gorman, Ex p. Bale*, [1899] 2 Q. B. 62.

(c) "Default in Payment of any Sum recoverable Summarily."

See Debtors Act, 1869 (c. 62), s. 4 (2); BANKRUPTCY & INSOLVENCY, Vol. V., p. 1023, No. 8351.

(d) "Default by Trustee or Person acting in a fiduciary Capacity."

i. In General.

See Debtors Act, 1869 (c. 62), s. 4 (3).

Object of exception.—*See BANKRUPTCY & INSOLVENCY*, Vol. V., p. 1023, Nos. 8352, 8353.

When exception applies.—*See BANKRUPTCY & INSOLVENCY*, Vol. V., pp. 1023, 1024, Nos. 8354-8363.

Release of trustee.—*See BANKRUPTCY & INSOLVENCY*, Vol. V., p. 1026, Nos. 8382-8384.

Enforcement of payment of money collected by trustee in bankruptcy.—*See BANKRUPTCY & INSOLVENCY*, Vol. IV., pp. 218, 219, Nos. 2036-2042.

404. Discretion of court to commit—Trustee unable to refund trust funds.—Where a trustee had sold out trust funds & lent them to a *cestui que trust*, & an order was made for payment of the same into ct. by the trustee, the ct. under the circumstances of the case, & being satisfied that the trustee was wholly unable to refund the trust money, exercised the discretion conferred by Debtors Act, 1878 (c. 51), & refused an application for a writ of attachment for non-compliance with the order.—*STREET v. HOPE* (1878), 10 Ch. D. 286, n.; 27 W. R. 470.

Annotation:—Folld. Barrett v. Hammond (1879), 10 Ch. D. 285.

—*See, further, BANKRUPTCY & INSOLVENCY* Vol. V., pp. 1024-1026, Nos. 8364-8381.

405. Order for payment of trust funds into court.—*SKIPPENS v. HAYWARD* (1895), 39 Sol. Jo. 783.

406. ——*Re DARLINGTON, BEBINGTON v. DARLINGTON* (1905), 49 Sol. Jo. 759.

See, further, TRUSTS & TRUSTEES.

Disobedience to orders for payment into court generally, *see* Sub-sect. 2, *post*.

ii. "Trustee or Person acting in a fiduciary Capacity."

See Debtors Act, 1869 (c. 62), s. 4 (3); BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1026-1028, Nos. 8385-8400.

407. Who is—Agent discounting bills.—*HUTCHINSON v. HARTMONT*, [1877] W. N. 29.

408. — Administratrix—Order to refund money received on suggestion of intestacy.—Letters of administration had been granted to the widow of a deceased person upon the suggestion of intestacy, & she had received a sum of money, part of deceased's property. The letters of administration were subsequently called in, in an action propounding a will of the deceased, & in that action she was ordered to pay the sum of money to the administrator pending suit, which order she had not obeyed:—*Held*: she was not protected by Debtors Act, 1869 (c. 62), & therefore was liable to attachment.—*TINNUCH v. SMART* (1885), 10 P. D. 184; 54 L. J. P. 92; 49 J. P. 792; 34 W. R. 16.

409. — Married woman—Liability for breach

PART V. SECT. 1, SUB-SECT. 1.—B. (a).

e. Proof requisite that party is within excepted cases.—Where an order

for attachment is sought against a person for not obeying an order for payment of money into ct. it must clearly appear that the person sought to be attached comes within the

exceptions of Imprisonment for Debt Abolition Act, 1874.—*BURKE v. ELLIOTT* (1886), 5 N. Z. L. R. 180.—N.Z.

Sect. 1.—Disobedience to orders for payment of money: Sub-sect. 1, B. (d) ii. & iii., (e), (f) & (g) i., ii., iii., iv. & v.; sub-sects. 2 & 3. **Sect. 2:** Sub-sect. 1.]

of trust.]—EVANS v. JENKINS (1903), 17 Sol. Jo. 787.

iii. "Sum in his Possession or under his Control."

See Debtors Act, 1869 (c. 62), s. 4 (3); BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1028, 1029, Nos. 8401-8413.

410. Debt due by executor to testator—Contracted in testator's lifetime.]—Re WOODWARD, WOODWARD v. WOODWARD (1886), 30 Sol. Jo. 753. **Annotation:—**Expld. *Re Bourne*, Davey v. Bourne, [1906] 1 Ch. 697.

Compare BANKRUPTCY & INSOLVENCY, Vol. V., p. 1028, Nos. 8407, 8408.

411. Money found due to client of solicitor—On taxation of bill of costs—Consisting partly of costs of taxation.]—Re WILDE, [1910] W. N. 128, C. A. **Annotation:—**Reid. *Re Weatherley* (1918), 88 L. J. K. B. 482.

412. Order on trustee to pay market value of securities—Securities previously sold for less sum.]—CRONIN v. TWINBERROW, [1887] W. N. 201; 32 Sol. Jo. 44.

Annotation:—Folld. *Re Walker*, Walker v. Walker (1890), 60 L. J. Ch. 25.

(e) *Default by Solicitor or Attorney.*

See Debtors Act, 1869 (c. 62), s. 1 (4); Debtors Act, 1878 (c. 51), s. 1; BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1029-1032, Nos. 8411-8434; SOLICITORS.

(f) *Default in Payment of Portion of Salary or Income for Benefit of Creditors.*

See BANKRUPTCY & INSOLVENCY, Vol. V., p. 1032, No. 8435.

(g) *Committal for Judgment Debts.*

i. *Judgment Summons.*

See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1032-1034, Nos. 8436-8457.

ii. "In Pursuance of any Order or Judgment."

See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1031, 1035, Nos. 8458-8467.

iii. "Means to pay."

413. Refusal of creditor to pay taxed costs—On dismissal of bankruptcy petition against debtor.]—Refusal by a creditor who brought a bkcpet. petition which was dismissed with costs, while possessed of means, to pay the taxed costs of the debtor is an act of contumacy within Debtors Act, 1869 (c. 62), s. 5, and will entitle debtor to an order under the sect.—*Re DRUMMOND*, *Ex p. ASHMORE*, [1909] 2 K. B. 622; 78 L. J. K. B. 935; 25 T. L. R. 706; 53 Sol. Jo. 651; 16 Mans. 201.

See, further, BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1035-1037, Nos. 8468-8477.

iv. *Order for Payment by Instalments.*

See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1037, 1038, Nos. 8478-8489.

PART V. SECT. 1, SUB-SECT. 1.— B. (e).

1. Jurisdiction of court—Solicitor not paying client his money.]—The ct. has jurisdiction to issue an attachment against an attorney for disobeying a rule of ct. ordering him to pay to his client the client's money.—*Re A. B.* (1886), 3 Man. L. R. 316.—CAN.

g. In his character of an officer of the court—Client's money.]—A solr.

received money for his client during his retainer, & not having remitted it, was ordered by the ct. to pay it & the costs of the order:—*Held*: he was guilty of misconduct as an officer of the ct.—*Re V.* (1874), 8 I. R. Eq. 355.—IR.

h. ———.]—*Re B.* (1876), I. R. 10 C. L. 439.—IR.

k. ———.]—*Re M.* (1878), 1 L. R. Ir. 188.—IR.

v. *Order of Committal.*

See BANKRUPTCY & INSOLVENCY, Vol. V., pp. 1038-1043, Nos. 8490-8511.

SUB-SECT. 2.—ORDERS FOR PAYMENT INTO COURT.

See Debtors Act, 1869 (c. 62), s. 4.

In respect of debt or sum of money due by party on whom order made.]—See Sub-sect. 1, B. (d) i., ante.

414. General rule.]—A purchaser may be committed for disobeying an order to pay in his money.—*LANSDOWN v. ELDETON* (1808), 14 Ves. 512; 33 E. R. 617, L. C.

415. ———.]—Where a sum of money has been ordered to be paid into ct. a garnishee order cannot be made attaching a debt to answer the sum so ordered to be paid in *Re GREER*, *NAPPER v. FANSHAW*, [1895] 2 Ch. 217; 64 L. J. Ch. 620; *sub nom. Re GREER*, *NAPPER v. FANSHAW*, 72 L. T. 865; 59 J. P. 441; 13 W. R. 517; 39 Sol. Jo. 503; 2 Mans. 350; 13 R. 598.

Annotations:—Reid. *Re Turnbull*, *Turnbull v. Nicholas*, [1900] 1 Ch. 180; *White & Pill v. Stennings*, [1911] 2 K. B. 418.

416. Interlocutory order for payment into court—Enforced by attachment if debtor within exceptions of Debtors Act, 1869 (c. 62).]—*HUTCHINSON v. HARTMONT*, [1877] W. N. 29.

417. As security for costs—In matrimonial suit.]—Where an order had been made on the husband, resp., to pay into ct. or give security for a sum of money to meet the wife's costs of the hearing, to be subsequently taxed, & such order was not obeyed, resp. alleging on affidavit his inability to raise the money or give security, the ct. ordered an attachment to issue against him, but to lie in the registry for one week from the date of such order.—*HEPWORTH v. HEPWORTH* (1861), 2 Sw. & Tr. 114; 31 L. J. P. M. & A. 18; 5 L. T. 365; 10 W. R. 195; 161 E. R. 1057. **Annotation:—**Reid. *Osborne v. Osborne & Martelle*, *Osborne v. Osborne* (1863), 33 L. J. P. M. & A. 38.

418. ———.]—In a husband's suit for divorce, where the wife in her answer also prayed for a dissolution of the marriage, petitioner had been ordered to deposit in the registry, or to give security for, the sum of £80, to cover the wife's costs of the hearing. On his neglecting to comply with this order the ct. declined to issue a writ of attachment against him, but ordered him to attend to be cross-examined as to his faculties.—*SULLIVAN v. SULLIVAN*, *LEAHAY*, *MADDEN & SLANEY* (1875), 33 L. T. 706.

419. ———.]—In a petition by the husband for dissolution of a marriage, petitioner had been ordered to pay or secure a certain sum for resp.'s costs of the hearing of the cause. Petitioner failed to comply with the order, alleging want of means on his part. The ct., under the circumstances, refused to enforce the order by the issue of a writ of attachment.—*CLARKE v. CLARKE*, [1891] P. 278; 60 L. J. P. 97.

Annotation:—N.F. *Jones v. Jones*, [1912] P. 295.

PART V. SECT. 1, SUB-SECT. 1.— B. (g) iii.

1. Indian having "means to pay."]—An Indian cannot be committed to gaol after examination as a judgment debtor, even though he has sufficient means & ability to pay the debt, the Indian Act preventing the judgment creditor from taking the assets of the Indian in execution, they cannot be reached indirectly.—*Re CALEDONIA MILLING Co. v. JOHNS* (1918), 42 O. L. R. 338; 14 O. W. N. 1.—CAN.

420. — — —.]—In a petition by a husband praying for a judicial separation on the ground of cruelty, to which the wife filed an answer denying the cruelty, countercharging the husband with adultery, & praying for judicial separation, the husband had been ordered to pay or secure the wife's costs of the hearing as estimated by one of the registrars, but failed to comply with this order:—*Held*: the wife's cross-claim for relief constituted her a petitioner, & it was open to her to move for a writ of attachment against her husband in respect of his failure to find security pursuant to the order.—*JONES v. JONES*, [1912] P. 295; 82 L. J. P. 16; 107 L. T. 590; 29 T. L. R. 22; 57 Sol. Jo. 10.

— — —.]—*See, further*, **BANKRUPTCY & INSOLVENCY**, Vol. V., p. 1022, Nos. 8346–8348.

421. As security for trust fund.]—Deft. was ordered to pay money into ct. which was then to be carried to the credit of an action for administering the estate of a testator whose extrix. was plff. in the present action. Deft. went abroad without complying with the order. On appeal:—*Held*: the order would be varied by ordering deft. to pay the money to plff., who was then to pay it into ct. in the administration action, such order being capable of being better enforced against deft.'s property than the order as originally framed.—*DE LA POLE (LADY) v. DICK* (1885), 29 Ch. D. 351; 54 L. J. Ch. 940; 52 L. T. 457; 33 W. R. 585, C. A.

Annotations:—*Re*fd. *Robinson v. Galland* (1889), 60 L. T. 697. *Mentd.* *R. v. Oxfordshire JJ.*, [1893] 2 Q. B. 149; *Re Greer, Napper v. Fanshawe*, [1895] 2 Ch. 217; *Bagley v. Maple* (1911), 27 T. L. R. 281.

See, also, Nos. 405, 406, *ante*.

Enforcement of Irish decrees—Enrolled in English Court of Chancery.]—*See* **CONFLICT OF LAWS**, Vol. XI., p. 470, Nos. 1218–1251.

SUB-SECT. 3.—CROWN DEBTS.

422. General rule—Debtors Act, 1869 (c. 62), not applicable.]—Deft. at the suit of the Crown is liable to arrest as if the above Act had not passed, Crown debts not being either directly or by implication referred to in that Act.—*A.-G. v. EDMUNDS* (1870), 22 L. T. 667.

423. — — —.]—Applt. in an appeal to the House of Lords in a Chancery suit had, in conformity with the practice in such appeals, entered into a recognizance for the payment of resps.' costs if unsuccessful. The appeal was unsuccessful, & applt. making default in payment of resps.' costs, the recognizance was estreated, & applt. was arrested under process from the Ct. of Exch.:—*Held*: applt. was a debtor to the Crown in respect of such costs, & therefore the above Act did not apply to the case, & applt. was not entitled to be discharged from custody.—*Re SMITH* (1876), 2 Ex. D. 47; 46 L. J. Q. B. 73; 35 L. T. 858.

See, further, **STATUTES**.

424. Legacy duty.]—Under 13 & 14 Vict. c. 97, s. 8, the ct. will grant an attachment, absolute in the first instance, against a person withholding legacy duty, who has failed to show cause why he should not pay the money to the Receiver General of Inland Revenue.—*Re EVANS* (1865), 3 H. & C. 562; 5 New Rep. 336; 11 L. T. 717; 11 Jur. N. S. 182; 13 W. R. 350; 159 E. R. 651; *sub nom.* *Re EATON*, 34 L. J. Ex. 87.

See, further, **ESTATE & OTHER DEATH DUTIES**.

425. Money owed by executors.]—*Re HIGGS, Re WEBB, Re NICHOLSON, J^r HITCHCOCK (MOTIONS FOR ATTACHMENT)* (1888), 5 T. L. R. 125, D. C.

426. Income tax—Liability of liquidators of company.]—Liquidators of a co. paid away all the assets to contributories & others without making provision for a Crown debt for income tax:—*Held*: the liquidators had misapplied the assets within the meaning of Cos. (Winding up) Act, 1890 (c. 63), s. 10, & must pay the amount of the Crown debt &, in default of payment, a writ of attachment was issuable as a matter of right, the ct. having no discretion in the matter.—*Re WATCHMAKERS' ALLIANCE & GOODE'S STORES, LTD.* (1905), 5 Tax Cas. 117.

See, further, **COMPANIES; INCOME TAX**.

SECT. 2.—DISOBEDIENCE TO ORDERS OTHER THAN FOR THE PAYMENT OF MONEY OR TO OTHER PROCESS.

SUB-SECT. 1.—IN GENERAL.

427. Order of court—Express order necessary.]—Attachment will not lie on a rule of ct. unless for disobedience of some express direction.—*DOE d. CARDIGAN (EARL) v. BYWATER* (1819), 7 C. B. 794; 137 E. R. 315.

Annotation:—*Expld.* *Swinfen v. Swinfen* (1856), 25 L. J. C. P. 303.

428. — — — **Proceeding likely to result in breach—Tantamount to actual breach.**]—*Seem*: any proceeding which may result in a breach of an order of the ct. is tantamount to an actual breach.—*HARDING v. TINGEY* (1861), 12 W. R. 681.

429. — — — **Not agreement by consent.**]—After the ct. declared a presentation void for simony, by consent of the parties S. was to remain in the vicarage for a time. He remained beyond the time & committed waste: *Held*: S. could not be attached for contempt, for remaining in possession after judgment was by consent & not by rule of the ct.—*R. v. ZAKAR* (1615), 3 Bulst 88; 81 E. R. 75.

Annotations:—*Mentd.* *Knowle v. Harvey* (1615), 1 Roll. Rep. 335; *Jefferson v. Durham, Bp.* (1797), 1 Bos. & P. 105.

430. — — — **Judges warrant.**]—Attachment for a contempt lies for disobedience to a judge's warrant.—*R. v. WHITE* (1734), *See temp.* *Hard.* 42; 95 E. R. 26.

Annotation:—*Consd.* *Miller v. Knox, Knox v. Gavan* (1838), 4 Bing. N. C. 574.

431. — — — **Rules of court—Under Judgments Act, 1838 (c. 110).**]—(1) The affidavits for an attachment for disobedience to a rule of ct., by which payment of a sum of money was ordered to be made to A. or his attorney, showed that the attorney had applied for payment, without success, & that he believed it remained unpaid, but did not expressly negative payment to A.:—*Held*: they were sufficient.

(2) An attachment will issue for disobedience to rules of ct. under the above Act.—*Ex p.* *SIMONS* (1846), 7 L. T. O. S. 138.

432. — — — **Not chief clerk's summons—R. S. C., Ord. 55, rr. 16, 17.**]—In an action to recover from deft. certain books, etc., a chief clerk's summons was issued on the part of plff. for the attendance of deft. at the chambers of the judge to be examined on the part of plff. for the purpose of the proceedings directed by the judge. Deft. having neglected to obey the summons, a motion was made for leave to issue a writ of attachment against him for his contempt. In support of the motion it was contended that, the motion being made under R. S. C., Ord. 55, rr. 16 & 17, deft. was guilty of contempt in not attending within the meaning of those rules, disobedience to a summons being

Secl. 2.—Disobedience to orders other than for the payment of money or to other process: Sub-sects. 1, 2 & 3, A., B., C., D., E., F., G., H., I., J. & K.]

equivalent to disobedience to an order of the ct., & that deft. was being dealt with as a party:—*Held*: it was immaterial that deft. was a party to the action, inasmuch as he was summoned as a witness, & must be dealt with accordingly, & the disobedience was not a disobedience to an order of the ct.—*POWELL v. NEVITT* (1886), 55 L. T. 728.

433. — Non-acquaintance with terms of order—Due to carelessness.—If a man does not choose to see the terms of an order which has been made against him, & chooses to act without seeing the terms of the order, he must take the consequences. Carelessness in failing to make himself acquainted with the terms of the order is as gross a contempt as if he had disobeyed the order (*KAY, J.*).—*Re WITTEN (AN INFANT)* (1887), 4 T. L. R. 36.

SUB-SECT. 2.—WILFUL DISOBEDIENCE.

434. General rule — Applied to corporations.—*FAIRCLOUGH v. MANCHESTER SHIP CANAL CO.*, [1897] W. N. 7, C. A.

Annotation:—*Mentd. Stancomb v. Trowbridge U. C.*, [1910] 2 Ch. 190.

See, further, CORPORATIONS, Vol. XIII., pp. 426–428.

435. Meaning of “wilfully disobey”—*R. S. C., Ord. 42, r. 38.*—The expression “wilfully disobey” in *R. S. C., Ord. 42, r. 38* is intended to exclude from the operation of the rule only casual, accidental or unintentional acts.—*STANCOMB v. TROWBRIDGE URBAN COUNCIL*, [1910] 2 Ch. 190; 79 L. J. Ch. 519; 102 L. T. 647; 71 J. P. 210; 26 T. L. R. 407; 51 Sol. Jo. 458; 8 L. G. R. 631.

436. Whether disobedience must be wilful.—A personal demand is absolutely necessary to bring a person into contempt, in order to proceed against him by attachment.

Deft. was served with a rule of ct., requiring him to reinstate premises belonging to pltf. forthwith, according to an agreement entered into by him to that effect at the trial:—*Held*: an attachment could not be issued against deft. for disobedience of the rule, on being merely served with it by pltf.'s agent, but a personal demand should have been made on him to comply with it in terms, at the time of service.

All the authorities show that before an attachment can be enforced, the party proceeded against must be proved to have been guilty of a wilful disobedience of the rule, & if that be not fully & satisfactorily made out, the ct. will not interfere (*SIR ROBERT GIFFORD, C.J.*).—*DODDINGTON v. HUDSON* (1824), 1 Bing. 410; 8 Moore, C. P. 510; 130 E. R. 165; *sub nom. DODDINGTON v. HUDSON*, 2 L. J. O. S. C. P. 58; *subsequent proceedings*, 1 Bing. 464.

437. — Disobedience by judge of inferior court.—*BARTON v. FIELD, THE WINWICK*, No. 55, *ante*. As to jurisdiction of superior & inferior cts. to punish, *see Part III., ante*.

— **To injunction.**—*See INJUNCTION.*
— **On part of witness subpoenaed.**—*See EVIDENCE.*

SUB-SECT. 3.—DISOBEDIENCE TO PARTICULAR ORDERS.

A. Subpœna ad testificandum and Orders for Examination of Witnesses.

See EVIDENCE.

B. Subpœna duces tecum and Orders for Production of Documents.

See EVIDENCE; DISCOVERY, INSPECTION & INTERROGATORIES.

C. Injunctions and Other Orders.

Injunctions.—*See INJUNCTION.*

— **Restraining nuisances.**—*See INJUNCTION; NUISANCE.*

— **Restraining molestation.**—*See INJUNCTION; HUSBAND & WIFE.*

— **Restraining infringement of patents.**—*See INJUNCTION; PATENTS & INVENTIONS.*

— **Restraining trespass.**—*See INJUNCTION; TRESPASS.*

— **Restraining passing off.**—*See INJUNCTION; TRADE MARKS, TRADE NAMES & DESIGNS.*

— **Breach of by servants or agents.**—*See AGENCY*, Vol. I., p. 687, No. 2961; *INJUNCTION; MASTER & SERVANT.*

— **Breach of by corporations.**—*See CORPORATIONS*, Vol. XIII., p. 426, No. 1501; *COMPANIES.*

— **Breach of by strangers to proceedings.**—*See Part IV., Sect. 6, ante.*

D. Mandamus and Certiorari.

See CROWN PRACTICE, pp. 276–352, 398 *et seq.*, *post*.

E. Prohibition.

See CROWN PRACTICE, pp. 372 *et seq.*, *post*.

F. Orders to answer Interrogatories.

See DISCOVERY, INSPECTION & INTERROGATORIES.

G. Orders for Affidavits of Documents.

See DISCOVERY, INSPECTION & INTERROGATORIES.

H. Orders for Delivery of Particulars.

See PLEADING.

I. Orders for Delivery of Accounts and Bills of Costs.

438. Accounts — Omission of certain items.—

(1) The alleged omission of certain items in an account delivered is not a sufficient disobedience of a judge's order to deliver an account to sustain a motion for an attachment.

(2) The non-delivery of an account, pursuant to a judge's order, until the order has been made a rule of ct., does not render the party so delaying the delivery liable to the costs of making the order a rule of ct. for the purpose of obtaining an attachment thereon.—*Ex p. LAURENCE* (1833), 2 Dowl. 230; *sub nom. LAWRENCE v. MORGAN*, 3 L. J. Ex. 60.

439. — Delay in delivery.—*Ex p. LAURENCE*, No. 438, *ante*.

440. — Refusal to deliver by trustees — To Charity Commissioners.—A refusal to send in accounts to the Charity Comrs., in pursuance of their order to render them an account, by a person who *bonâ fide* disputes his liability to do so, is a contempt which will justify the Ct. of Ch. in committing him.

Qu.: whether disobedience to such an order by a member of Parliament renders him liable to be committed for contempt.—*Re PEEL'S (SIR ROBERT) SCHOOL, TAMWORTH*, *Ex p. CHARITY COMRS.* (1868), 3 Ch. App. 543; 32 J. P. 707; *sub nom. TAMWORTH SCHOOL CASE*, *Ex p. CHARITY COMRS.*, 37 L. J. Ch. 473; 18 L. T. 541; 16 W. R. 773, L. J.

Annotations:—*Folld. Re Gilchrist Educational Trust*, [1895] 1 Ch. 367. *Reid. Jarmain v. Chatterton* (1882), 20 Ch. D. 493; *Re St. John Street Wesleyan Methodist Chapel*,

Chester, [1893] 2 Ch. 618. **Mentd.** *R. v. Income Tax Special Comrs., Ex p. Rank's Trustees* (1922), 91 L. J. K. B. 311.

441. ———. ———.]—Motion by the Charity Comrs. under Charitable Trusts Act, 1853 (c. 137), s. 14, & Charitable Trusts Act, 1855 (c. 124), s. 9, to commit churchwardens & a vestry clerk for contempt of ct. in not delivering accounts of parish property as required by the Comrs. Resps. consented at the bar to give an undertaking to account, if the ct. should be of opinion that they were bound to do so:—**Held:** since the ct. were of opinion that a contempt had been committed, upon the undertaking of the churchwardens to deliver the accounts within a month, they would be ordered to pay the costs of the action.—*Re St. BRIDE'S, FLEET STREET, (CHURCH OR PARISH ESTATE* (1877), 35 Ch. D. 147, n.; 56 L. J. Ch. 692, n.; 35 W. R. 689, n.; *affd.*, [1877] W. N. 149, C. A.

Annotation:—Mentd. *Re St. Botolph Without Bishopsgate Parish Estates* (1887), 35 Ch. D. 142.

442. ———. ———.]—Unless a charity comes within the exemption specified in Charitable Trusts Act, 1853 (c. 137), s. 62, the trustees are bound to render accounts to the Charity Comrs. On motion to commit the trustees for refusing to render accounts, the trustees were ordered to pay the costs of the motion.—*Re (GILCHRIST EDUCATIONAL TRUST, [1895] 1 Ch. 367; 61 L. J. Ch. 298; 71 L. T. 875; 13 W. R. 231; 13 R. 228.*

See, further, CHARITIES, Vol. VIII., pp. 380–1, Nos. 1933–1940; TRUSTS & TRUSTEES.

Solicitor's bill of costs.]—See SOLICITORS.

J. Orders relating to Custody of the Person.

Habeas corpus.]—See CROWN PRACTICE, p. 272, Nos. 811–825, *post*.

Custody of infants.]—See INFANTS & CHILDREN; HUSBAND & WIFE.

Custody of lunatics.]—See LUNATICS & PERSONS OF UNSOUND MIND.

K. Other Orders.

443. To re-invest money.]—An attorney obtained a legatee's authority to sell out stock, representing that it might be better invested in a mortgage, & that he would find a proper security, & proposed a mortgage, which was thought insufficient, on property of his own. The legatee moved the ct. against him, & a rule was made, ordering re-investment on or before June 24 then next, & on default, that attachment should issue against him. The money was not re-invested, & on June 25 a fiat in bkpcy. issued against the attorney, who, in Oct. obtained his certificate. On motion for an attachment pursuant to the rule:—Held:** under the circumstances, the certificate was no answer to the application, & attachment might issue.—*Re NEWBURY* (1835), 4 Ad. & El. 100; 5 Nev. & M. K. B. 419; 1 Har. & W. 575; 5 L. J. K. B. 4; 111 E. R. 725.**

Annotation: Refd. Re ——— (1855), 25 L. T. O. S. 98.

444. To seal corporation leases.]—The mayor of C. was ordered to stand committed for not putting the corpn. seal to some leases, pursuant to an order of ct. for that purpose.—A.-G. v. COVENTRY CORPN. (1712), Dick. 781; 21 E. R. 474.

See, further, CORPORATIONS, Vol. XIII., pp. 375, 376.

445. To execute document—Lapse of four

years.]—Where by an order of ct. debts. were required to cancel a certain deed, & procure the execution of a new one, the ct. refused to grant an attachment for not obeying the order, it appearing that four years had elapsed since the order, & that debts. had been unable to procure the execution of the deed by one of the parties to it. *CLARE v. BLAKESLEY* (1810), 8 Dowl. 835; 1 Man. & G. 567; 1 Scott, N. R. 397; 4 Jur. 992; 133 E. R. 157.

446. ———.]—Where a person has been directed to execute a lease, but refuses to do so, the ct. can only enforce such execution by attachment, Trustee Act, 1850 (c. 60) having omitted to provide for such a case.—*GRACE v. BAYNTON* (1877), 25 W. R. 506; *subsequent proceedings*, 21 Sol. Jo. 631, C. A.

447. To surrender copyholds—Pursuant to covenant in mortgage deed.]—VAUGHAN v. DIX (1896), 40 Sol. Jo. 728; *subsequent proceedings*, 10 Sol. Jo. 816.

448. To deliver up letters patent—For cancellation.]—R. v. NEWTON (1845), 5 L. T. O. S. 261, L. C.

449. ———. ———.]—A judgment having been obtained in the Queen's Bench on *scire facias* that letters patent should be restored into Chancery on a certain day to be cancelled, & the enrolment thereof vacated, debt., after having been thrice summoned on that day to appear & produce the letters patent, the Lord Chancellor, declining to make the order sought, that the letters patent should be cancelled, & debt. committed for contempt, made the order *nisi*.—*R. v. STEINER* (1852), 18 L. T. O. S. 267, L. C.

450. To deliver inventory.]—An exor., being called upon by a citation *inter alia* to bring in an inventory, appeared & complied with the citation in part only but did not bring in the inventory:—Held:** he had not complied with the assignation, & the ct. therefore was in a position to pronounce him in contempt & to direct the contempt to be signified.—*EDWARDS v. MARTYN* (1850), 2 Rob. Eccl. 285; 163 E. R. 1320.**

Annotation:—Mentd. *Crosby v. Noton* (1867), 36 L. J. P. & M. 55.

451. ——— Married woman.]—An attachment will be granted against a married woman for non-compliance with a citation, calling upon her to file an inventory in the registry of an estate of which she is administratrix.—BAKER v. BAKER (1860), 2 Sw. & Tr. 380; 29 L. J. P. M. & A. 138; 24 J. P. 150; 161 E. R. 1043.

452. To deliver up chattels—Order on married woman.]—A rule *nisi* for an attachment for disobedience to an order of the ct. that she should deliver up a diamond ring or pay its value was granted against a married woman, an execution against her having proved futile.—BATTLE v. SEARS (1876), 3 Char. Pr. Cas. 365.

453. To deliver up negotiable security—Dispute as to possession.]—BRUCKLEBUSCH v. COUSINS (1888), 5 T. L. R. 137, D. C.

454. To deposit negotiable securities.]—HARVEY v. MORRIS (No. 2) (1874), 23 W. R. 40.

455. Writ of summons—Under Stamp Duties Management Act, 1891 (c. 38).]—Re COULSON (DECEASED) (1894), Highmore's Stamp Laws, 3rd ed. 18, D. C.

See, further, REVENUE.

PART V. SECT. 2, SUB-SECT. 3.—K.

m. To execute document—Evading service of order—Deed deposited with attorney.]—Defts. having evaded service of an order of the ct. for the execution of a deed & evaded tender of the deed, the ct. ordered the deed to be

deposited with their attorney for execution. They did not execute it:—**Held:** debts. must be attached.—*SULLIVAN v. CARR* (1864), 1 P. E. I. 242.—**CAN.**

n. ——— Composition notes.]—An arranging debtor undertook to execute

composition notes for the amount of his liabilities, but he refused to sign the notes when tendered to him for signature: the ct. ordered that he should sign the notes; he declined so to do.—**Held:** an attachment should issue against him for contempt.—*Re H.* (1877), 11 I. R. Eq. 106.—**IR.**

Sect. 2.—Disobedience to orders other than for the payment of money or to other process: Sub-sect. 3, K.; sub-sect. 4. Sects. 3 & 4.]

456. Order of Court of Chancery—To discontinue proceedings in another court.]—If deft. who is ordered by this ct. to discontinue a proceeding which he has commenced against the pltf. in some other ct. of justice, either in this country or abroad, thinks fit to disobey that order, & to prosecute such proceeding, this ct. does not pretend to any interference with the other ct.; it acts upon deft. by punishment for his contempt in his disobedience to the order of the ct.; & if he continue contumacious, & ultimately obtain a judgment in the other ct., it will protect pltf. here against the consequences of that judgment; & this authority is ordinarily found fully adequate to the purposes of justice (LEACH, V.-C.).—*BUSHBY v. MUNDAY* (1821), 5 Madd. 297; 56 E. R. 908.

Annotations:—Mentd. *Bunbury v. Bunbury* (1839), 8 L. J. Ch. 297; *Carron Iron Co. v. MacLaren* (1855), 5 H. L. Cas. 416; *Vennihur v. Loyd* (1859), 1 De G. F. & J. 193; *Hymen v. Helm* (1883), 24 Ch. D. 531; *Re Connolly, Wood v. Connolly*, [1911] 1 Ch. 731; *Guaranty Trust Co. of New York v. Hannay*, [1915] 2 K. B. 536; *Cohen v. Rothfield*, [1919] 1 K. B. 410.

457. — Restraining proceedings in manor court.]—An attachment was awarded against deft. for proceeding in the ct. of the manor of B. contrary to the order of the Ct. of Ch.—*BILLING v. PATE* (1579), Ch. Cas. in Ch. 132; 21 E. R. 80.

Counsel moving for judgment at common law—After notice of injunction against proceedings at law.]—*See BARRISTERS, Vol. III., p. 319, No. 398.*

458. Order of registrar—Under Companies (Winding up) Act, 1890 (c. 63), s. 7.]—*Re COLUMBIAN GOLD MINES* (1894), 42 W. R. 624; 10 T. L. R. 178; 38 Sol. Jo. 478; 1 Mans. 349; 8 R. 411.

459. Monition of Court of Admiralty.]—Imprisonment of master & part owner will be ordered for disobedience to a monition.—*THE TRIUNE* (1834), 3 Hag. Adm. 114

460. Decree for restitution of conjugal rights—Effect of Matrimonial Causes Act, 1884 (c. 68), s. 2.]—*WELDON v. WELDON* (1885), 54 L. J. P. 60; 52 L. T. 233; 49 J. P. 517; 33 W. R. 427, C. A.

See, further, HUSBAND & WIFE.

Order for taxation of solicitor's bill of costs—& stay of proceedings till report made.]—*See SOLICITORS.*

SUB-SECT. 4.—ERRONEOUS OR IRREGULAR ORDERS.

461. General rule.]—Contempts for acting against an order of ct. discharged, the order being erroneous.—*STONE v. BURN* (1722), 2 Eq. Cas. Abr. 222, pl. 5; 5 Vin. Abr. 452, pl. 14; 22 E. R. 189.

462. —.]—Persons violating an order are entitled to the benefit of the fact that the order ought not to have been made.—*DREWRY v. TIACKER* (1819), 3 Swan. 529; 36 E. R. 963, L. C. *Annotations:—Consd.* *Russell v. East Anglian Ry.* (1850), 3 Mac. & G. 104. *Reid.* *Grand Junction Canal Co. v. Dimes* (1850), 2 H. & Tw. 92. *Mentd.* *Lee v. Park* (1836), 1 Keen, 714; *Vincent v. Godson* (1850), 3 De G. & Sm. 717.

463. —.]—Injunction to restrain deft. (pltf. at law) from taking possession under a verdict obtained by him in an action of ejectment. Previous to the issuing of the injunction, the costs had been taxed, & a writ of possession executed. Pltf. at law afterwards procured an attachment

for non-payment of the costs:—*Held: a breach of the injunction, but, as the injunction had been improperly issued, the ct. would make no order as to committing the party for the contempt.*—*PARTINGTON v. BOOTH* (1817), 3 Mer. 148; 36 E. R. 57, L. C.

464. —.]—It is an established rule that it is not open to a party to question any order or process of the ct. by disobedience, & it is not inconsistent with this general rule that the ct. in administering punishment for disobedience to an order will attend to all the facts of the case, & amongst others, to the circumstances under which the order was made.

It is an established rule of this ct. that it is not open to any party to question the orders of this ct. or to question any process issued under the authority of this ct. by disobedience. I know of no act of this ct. which may not be questioned in a proper form & on a proper application, but I think it is not competent for any one to interfere with a receiver, to disobey an injunction or to disobey any other order of the ct. on the ground that such orders were improvidently made; they must take a proper course to question them, but while they exist they must obey them (LORD TRURO, C.).—*RUSSELL v. EAST ANGLIAN RY. CO.* (1850), 3 Mac. & G. 104; 6 Ry. & Can. Cas. 501; 20 L. J. Ch. 257; 16 L. T. O. S. 317; 14 Jur. 1033; 12 E. R. 201, L. C.

Annotations:—Consd. *Jarmain v. Chatterton* (1882), 20 Ch. D. 493. *Reid.* *Re Mead, Ex p. Cochrane* (1875), L. R. 20 Eq. 282. *Mentd.* *Fripp v. Chard Ry.* (1853), 11 Hare, 241; *Potts v. Warwick, etc., Canal Navigation Co.* (1853), Kay, 142; *Ames v. Birkenhead Docks Trustees* (1855), 20 Beav. 332; *De Winton v. Brecon Corpn.* (No. 2) (1860), 28 Beav. 200; *Bowen v. Brecon Ry., Ex p. Howell* (1867), L. R. 3 Eq. 511; *Gardner v. L. C. & D. Ry.* (No. 1), *Drawbridge v. L. C. & D. Ry.*, *Gardner v. L. C. & D. Ry.* (No. 2), *Imperial Mercantile Credit Assocn. v. L. C. & D. Ry.* (1867), 2 Ch. App. 201; *Re Mayhew, Ex p. Till* (1873), L. R. 16 Eq. 97; *Edwards v. Edwards* (1875), 1 Ch. D. 454; *Re Burry Port & Gwendreath Valley Ry.* (1885), 54 L. J. Ch. 710; *Re Hull, Barnsley & West Riding Junction Ry.* (1888), 40 Ch. D. 119; *Re Dry Docks Corpn. of London* (1888), 58 L. J. Ch. 33.

465. Order must be obeyed—Until discharged.]

(1) Attachment will lie even though the original order be not served but only a copy & though the order be granted by mistake.

(2) Whatever the mistake may be, the subject must obey below & dispute here, for a contempt is not to be justified (LORD NOTTINGHAM, C.).—*WOODWARD v. LINCOLN (EARL)* (1674), 3 Swan. 626; 36 E. R. 1000, L. C.

466. —.]—It is clear that a party who is served with an order may be guilty of contempt for disobedience in a case in which the order ought not to have been made. He is not to determine for himself but ought to come to the ct. for relief if advised that the order is invalid (LORD LANGDALE, M.R.).—*FENNINGS v. HUMPHERY* (1841), 4 Beav. 1; 10 L. J. Ch. 251; 5 Jur. 455; 49 E. R. 237.

Annotation:—Mentd. *Anglo Danubian Co. v. Rogerson* (1867), L. R. 4 Eq. 3.

467. —.]—An order of course alleged to have been irregularly obtained, cannot be treated as a nullity. It operates, until, by a proper application, it is discharged.—*BLAKE v. BLAKE* (1844), 7 Beav. 514; 49 E. R. 1165; *subsequent proceedings*, 4 L. T. O. S. 231.

468. —.]—An order of the ct. of which the party affected by it has notice, though not formally served upon him, is not to be disregarded or treated by him as a nullity, however certain it may be that the order is erroneous & would upon

a proper application for that purpose be discharged.—*CHUCK v. CREMER* (1846), 2 Ph. 113; 1 Coop. temp. Cott. 338; 16 L. J. Ch. 92; 8 L. T. O. S. 309; 41 E. R. 884, L. C.
Annotation:—Refd. *Whittington v. Edwards* (1858), 3 De G. & J. 243.

469. ———.]—When a master makes an irregular order, it is binding on all parties to the suit who have notice of it, & any proceedings taken in contempt of the order will be discharged with costs, till the irregular order has been set aside.—*HUGHES v. WILLIAMS* (1847), 6 Hare, 71; 16 L. J. Ch. 200; 9 L. T. O. S. 50; 11 Jur. 237; 67 E. R. 1087, L. C.

470. **Warrant improperly directed—To keeper of gaol.**—The keeper of the gaol of N. was indicted for refusing to receive certain persons, committed by a magistrate for the county of M., in wilful & contemptuous disobedience of his warrant. The warrant was directed, not to "The keeper of N.," as was usual, but to "The keeper of the common gaol in & for the county of M." & in the margin was written "for trial at Clerkenwell." It appeared that this was the form in which warrants were made out for the new prison at Clerkenwell:—*Held*: although, in point of law, N. was the common gaol for M., yet the not receiving prisoners with a warrant in such a form, was not a wilful & contemptuous disobedience within the words of the indictment.—*R. v. COPE* (1835), 7 C. & P. 720, N. P.; *subsequent proceedings*, 6 Ad. & El. 226.

Service of order.] See Part VI., Sect. 5, sub-sect. 3, *post*.

Alteration of subpoena—Whether binding on witness.] See EVIDENCE.

Variation between copy of subpoena served & original.]—See EVIDENCE.

SECT. 3.—DISOBEDIENCE TO AWARD OF ARBITRATORS.

Enforcement of award by attachment.]—See ARBITRATION, Vol. II., pp. 576–583, Nos. 2065–2159.

SECT. 1.—BREACH OF UNDERTAKING.

By solicitors.]—See SOLICITORS.

471. **What amounts to an undertaking—To pay money—Obtaining stay of proceedings on payment of agreed sum.**—If deft. in a penal action obtain a rule to stay proceedings on paying a sum agreed upon between him & plff., it is an undertaking by him to pay that sum, & for the non-payment of it, the ct. will grant an attachment.—*KING v. CLIFTON* (1793), 5 Term Rep. 257; 101 E. R. 145.
Annotation:—Refd. *Pugh v. Kerr* (1839), 5 M. & W. 164.

472. ——— **Order for delivery of deeds "upon payment."**—A judge's order was obtained for referring an attorney's bill for taxation, which directed that "upon payment," the attorney should deliver up all deeds. The order was made a rule of ct., but not the usual submission by the client in the judge's book:—*Held*: the words, "upon payment," in the judge's order, did not raise an implied undertaking on the part of the client to pay, therefore an attachment could not be issued for non-payment.—*PRICE v. PHILCOX* (1839), 1 Will. Woll. & H. 558.

473. **What amounts to breach—Application to Parliament for relief—Involving contravention of undertaking to court.**—Defts. having given an undertaking that the ct. should have the same

power over the works, which were to be the subject of a trial at law, after the result of the trial as it then had; & the ct., on that ground, permitting the works to proceed, the Lord Chancellor declared it was a very grave offence to the ct. to attempt to procure a clause to be introduced into an Act of Parliament taking away that power.—*A.-G. v. MANCHESTER & LEEDS RY. CO.* (1839), 1 Ry. & Can. Cas. 436; 3 Jur. 379, L. C.

Annotations:—Refd. *Lancaster & Carlisle Ry. v. N. W. Ry.* (1856), 2 K. & J. 293; *Steele v. North Met. Ry.* (1867), 2 Ch. App. 237; *R. v. L. C. & D. Ry. Arrangement Act*, 52 p. Hartridge & Allender (1870), 5 Ch. App. 671. *Mentd.* *A.-G. v. Birmingham & Oxford Junction Ry., G. W. Ry. & Birmingham, Wolverhampton & Dudley Ry.* (1851), 16 Jur. 113.

474. ——— **Necessity for notice of application to court.**—When an application has been made to Parliament, & that has been kept back from the ct., we have had a strong judicial intimation of opinion, that although the ct. cannot commit parties for contempt, because they have submitted by injunction or undertaking not to do any act, & then applied to Parliament to obtain power, & contravene the undertaking entered into, yet it was a most improper proceeding. Therefore, I think it right that it should appear that notice was given to the ct. that there was a pending application at the time when the injunction was submitted to, in order to keep clear of any charge of such an impropriety in not communicating it (*SIR W. P. WOOD, V.-C.*).—*A.-G. v. BOYLE* (1864), 3 New Rep. 414; 10 L. T. 290; 10 Jur. N. S. 309.

475. ——— **Of undertaking not to communicate with ward of court.**—*SCOTT v. PADWICK* (1887), 3 T. L. R. 675.

476. ———.]—*SCOTT v. PADWICK* (1888), 1 T. L. R. 569.

477. ——— **Of undertaking not to molest.**—*LINTON v. MACKENZIE* (1893), *Times*, Oct. 31, D. C.

478. ——— **Of undertaking not to act on application for shares.**—*WASON v. ROYAL BRITISH BANK* (1903), 47 Sol. Jo. 718.

479. **Excuses for breach—Undertaking not personal—By solicitor.**—The ct. will not attach a party for not appearing to a bill for an injunction according to the undertaking of his solr., who accepted the *subpoena*.—*PEMBERTON v. GILBY* (1821), 9 Price, 116; 147 E. R. 19.

480. ——— **& unknown to party.**—*TURNER v. NAVAL, MILITARY, & CIVIL SERVICE CO-OPERATIVE SOCIETY OF SOUTH AFRICA, LTD., & PITT LEWIS & BOYD* (1907), *Times*, Jan. 21.

481. ———.]—*DENSHAM v. RAY, Re HUMPHREY* (1920), 55 L. Jo. 52; 149 L. T. Jo. 86.

482. ——— **Undertaking given by mistake.**—(1) The ct. has a discretion as to enforcing, by attachment, an undertaking given by any party.

(2) Where, on motion for a mandatory injunction, an order was made by consent pursuant to the terms of a previous agreement by which deft. gave an undertaking to remove certain obstructions, & it appeared that deft. had by mistake consented to a more extensive undertaking than he intended to do:—*Held*: the ct. would not enforce that part of the undertaking which had been given by mistake.—*MULLINS v. HOWELL* (1879), 11 Ch. D. 763; 48 L. J. Ch. 679.

Annotations:—As to (1) Refd. *Ainsworth v. Wilding*, [1896] 1 Ch. 673. *Generally, Mentd.* *Neale v. Gordon Lennox*, [1902] 1 K. B. 838.

Service of orders.]—See Part VI., Sect. 5, sub-sect. 3, B. (c), *post*.

483. **Punishment for breach—Undertaking to pay money—Order for sale under R. S. C., Ord. 57, r. 12—Debtors Act, 1869 (c. 62), ss. 4, 5.**—An order was made in interpleader proceedings that the sheriff should sell the goods seized, under

Sect. 4.—Breach of undertaking. Part VI. Sects. 1 & 2.]

R. S. C., Ord. 57, r. 12, & pay the claimant, the execution creditor undertaking to make good any deficiency on sale. There was a deficiency, & the master ordered that the execution creditor should pay the amount to the claimant. Default being made in payment, an order was made committing the execution creditor for contempt of ct. There was no proof that he had means to pay:—*Held*: the case was one of default in payment of a sum of money, within the meaning of sect. 4 of the above Act, & an order of commitment could not be made.—*BUCKLEY v. CRAWFORD*, [1893] 1 Q. B. 105; 62 L. J. Q. B. 87; 67 L. T. 681; 57 J. P. 89; 41 W. R. 239; 9 T. L. R. 85; 37 Sol. Jo. 67; 5 R. 125, D. C.

484. ——— **Where no time fixed for compliance.]**—(1) Ordinarily, where an undertaking is given, not fixing any time, for payment of money into ct. or to a joint account at a bank, an order fixing a time is required before the undertaking can be enforced. But there may be cases of contempt for non-payment so gross as to justify committal without such an order.

(2) It is not necessary within the terms of

Ord. 52, r. 4, to serve copies of the exhibits to the affidavit on which a motion to attach is founded with the notice of motion & affidavit; but a party moving to attach who does not serve copies of any exhibits reasonably necessary to enable resp. thoroughly to understand the grounds upon which the application is being made, runs the risk of having the motion dismissed on the ground that the evidence has not been properly brought to the notice of resp.—*CARTER v. ROBERTS*, [1903] 2 Ch. 312; 72 L. J. Ch. 655; 89 L. T. 239; 51 W. R. 520; 47 Sol. Jo. 515.

Annotation:—*As to* (1) *Distd. Re Launder, Launder v. Richards* (1908), 98 L. T. 554.

As to disobedience to orders for payment of money, *see* Sect. 1, *ante*.

485. ——— **Undertaking given by corporation—Sequestration—R. S. C., Ord. 42, r. 31.]**—*A.-G. v. WHEATLEY & Co., LTD.* (1903), 18 Sol. Jo. 116.

486. ——— **—**—*MILBURN v. NEWTON COLLIERY, LTD.* (1908), 52 Sol. Jo. 317.

Annotation:—*Mentd. R. v. Wigand, Re Wigand* (1913), 29 T. L. R. 509.

— **Enforcement of judgments & orders against corporations.]**—*See* CORPORATIONS, Vol. XIII., pp. 426 *et seq.*

Part VI.—Attachment and Committal.

SECT. 1.—IN GENERAL.

Jurisdiction of court to punish, *see* Part III., *ante*.

487. Conditions precedent to issue of process.]

—For the purpose of proceeding in attachment certain conditions, unquestionably founded on the requirements of natural justice, where it is sought to interfere with the liberty of any person, have to be complied with. The first of these conditions is that the order for disobedience to which it is sought to attach anybody must be shown to have been brought to the knowledge of that person. The next condition which has to be fulfilled is, I think, this, that if any individual is going to be treated as responsible for disobedience to the order, the fact that he is going to be so treated must be brought home to him, & the proper method of bringing home to that individual the fact that it is proposed to proceed against him is to name him either in the notice of motion, if that be the appropriate form of proceeding, or in the rule *nisi*, if that be the proper form. The third condition is that to which I have alluded, that the evidence of disobedience to the command must be sufficient to establish that disobedience (*WARRINGTON, L.J.*).—*R. v. POPLAR BOROUGH COUNCIL* (No. 2). [1922] 1 K. B. 95; 91 L. J. K. B. 174; 126 L. T. 138; 85 J. P. 259; 38 T. L. R. 5; 19 L. G. R. 731, C. A.

488. ——— **Must not be performed irregularly.]**—*ROGERS v. TWISDEL*, No. 668, *post*.

489. Nature of writ of attachment.]—An attachment is in the nature of an execution.—*FIELD v. WALFORD* (1717), *Cooke, Pr. Cas.* 14; 1 Com. 261; 125 E. R. 928.

490. ——— **]**—*LEWIS v. MORLAND*, No. 975, *post*.

491. Whether attachment will issue—Remedy by action.]—Motion against several persons for executing an outlawry on a Sunday. The rule was to show cause why deft. should not be discharged, & why an attachment should not be issued against them:—*Held*: the rule for the discharge of deft. would be made absolute, &

that part of the rule for an attachment would be discharged, because Sunday Observance Act, 1677 (c. 7), s. 6, gave a remedy by action.—*OSBORN v. CARTER* (1733), *Cooke, Pr. Cas.* 90; *Barnes*, 319; 125 E. R. 976.

492. ——— **Remedies by indictment & criminal information.]**—*Ex p. WILTON*, No. 701, *post*.

493. ——— **For enforcing order as to alimony & costs—After dismissal of suit.]**—(1) Where there was a balance due from petitioner, the husband, for alimony & costs, & there had been an arrangement between the parties that the balance should be paid by monthly instalments of £20, & that an attachment should be granted against him to remain in the registry until he made default in payment of one of the instalments, the ct. dismissed the petition, & decreed an attachment on the terms arranged.

(2) The ct. has power to enforce an attachment after the suit has been dismissed.—*BREMNER v. BREMER & BRETT* (1861), 3 Sw. & Tr. 378; 33 L. J. P. M. & A. 202; 10 L. T. 99; 12 W. R. 441; 164 E. R. 1321.

Annotations:—*Generally, Mentd. Bancroft v. Bancroft & Runney* (1864), 3 Sw. & Tr. 597; *Baker v. Baker & Grigg* (1867), 36 L. J. P. & M. 119; *Yowell v. Yowell, Serrash & Burleigh* (1875), 24 W. R. 59; *Waudby v. Waudby*, [1902] P. 85; *Quatermaine v. Quatermaine & Glenister* (1911), 105 L. T. 80.

494. ——— **Committal asked for by notice of motion.]**—Application was made under R. S. C., Ord. 42, rr. 5 & 20, for a writ of attachment against deft. in contempt who did not appear. This notice of motion was for an order to commit. It was contended that under R. S. C., Ord. 42, rr. 5 & 20, the ct. might order a writ of attachment on the notice of motion:—*Held*: on the principle that the greater includes the less, the writ should issue.—*PIPER v. PIPER* (1876), 3 Char. Pr. Cas. 366.

Annotation:—*Consd. Buist v. Bridge* (1880), 43 L. T. 432.

495. Committal will not be granted ex parte—Where order for attachment obtained.]—(1) Pltf. who has served notice of motion for leave to issue a writ of attachment against deft. in contempt, &

obtained an order accordingly, cannot afterwards move *ex p.* for an order of committal to issue instead of the writ of attachment which he has obtained.

(2) A person committed by the ct. is unable to be bailed out, whereas under a writ of attachment the sheriff may accept bail (JESSEL, M.R.).—*BUIST v. BRIDGE* (1880), 43 L. T. 432; 29 W. R. 117.

496. Committal & attachment may be claimed—By same motion.]—Though the distinction between attachment & committal has been for most purposes abolished, yet it will be maintained in some cases.

Pltf. had moved for leave to issue a writ of attachment against deft. for his contempt committed in breach of an undertaking given in an action not to carry on a certain business:—*Held*: he would be allowed to amend his notice of motion by asking for committal as well as attachment.

Under the old practice, as well as under the present practice, in order to obtain an order for committal notice of motion must be served on resp., but under the old practice it was not necessary to serve notice of motion for attachment. Attachment issued at the instance of the party aggrieved & at his own risk. But since Jud. Acts the old practice has been altered, owing probably to the abolition of imprisonment for debt & to abuses arising from it. The rule now is that notice of motion must be served on the party sought to be attached. In this respect, therefore, attachment & committal stand on the same footing, for neither can be obtained without notice of motion. The former distinction between committal & attachment was this; committal was the proper remedy for doing a prohibited act, & attachment was the proper remedy for neglecting to do some act ordered to be done. Attachment goes to the sheriff & committal to the officer of the ct., & in cases of attachment bail is sometimes admitted. I have made these observations to show that for some purposes there is still a distinction between attachment & committal, though in substance it is generally immaterial whether the motion be for attachment or committal (CHITTY, J.).—*CALLOW v. YOUNG* (1887), 56 L. J. Ch. 690; 56 L. T. 147.

Distinction between attachment & committal, see Sect. 2, *post*.

Notice of motion, see Sect. 5, sub-sect. 6, *post*.

SECT. 2.—DISTINCTION BETWEEN ATTACHMENT AND COMMITTAL.

497. Former distinction—Effect of rules under Judicature Acts.]—(1) Where a writ of attachment has issued against a party to an action for contempt of ct. in non-compliance with an order for the delivery over of deeds & documents, the officer charged with the execution of the writ may break open the outer door of the house, the house being barred, in order to execute it.

(2) The rules under Jud. Acts introduced an important alteration in regard to attachments. Formerly an attachment issued as ordinary civil process as of course on the application of a party, as appears from the case of *Abud v. Riches* [No. 932, *post*], but now, under R. S. C., Ord. 44, r. 2, an

attachment issues only after an order of the ct. made on notice to the person sought to be attached. By r. 1 of the same Ord. a writ of attachment has the same effect as a writ of attachment out of the Ch. Div. has heretofore had; but the Ords. are silent as to the manner of executing the writ, whereas R. S. C., Ord. 43, r. 1, says that writs of *fi. fa.* & *elegit* shall be executed in the same manner as heretofore. By R. S. C., Ord. 42, rr. 7 & 24, attachment & committal are apparently placed on the same footing, & in the case of *Sprunt v. Pugh* [7 Ch. Div. 567] on a motion against a receiver, in which I myself was counsel, JESSEL, M.R. stated his opinion, though it does not appear in the report, that the distinction between committal for contempt & attachment for contempt was practically abolished; the difference between them seems mainly to be in the more summary process of the former & in the degree of inconvenience & expense attending it. The distinction between an order for committal & an attachment for contempt was formerly considered to be, that committal was the proper remedy for doing an act prohibited by injunction or the like, whereas attachment was the remedy for neglecting to do some act ordered to be done. Committal for contempt never took place except by order of the ct. Interference with a ward of ct., interfering with the due administration of justice, as by intimidating witnesses, or ill-treating a process server, & breaches of an injunction, were & still are all alike treated as in the nature of offences punishable by committal (CHITTY, J.).—*HARVEY v. HARVEY* (1881), 26 Ch. D. 611; 51 L. T. 508; 48 J. P. 168; 33 W. R. 76.

Annotations:—(1) *Refd.* *Re Evans*, *Evans v. Noton*, [1893] 1 Ch. 252. (2) *Refd.* *Selous v. Croydon R. S. A.* (1885), 53 L. T. 209; *R. v. Lambeth County Court Judge & Jonas* (1887), 36 W. R. 475; *Mander v. Paleke*, [1891] 3 Ch. 488; *Seldon v. Wilde*, [1910] 2 K. B. 9; *Taylor, Plimston v. Plimston* (1911), 81 L. J. Ch. 31.

498. ———.]—*CALLOW v. YOUNG*, No. 496, *ante*.

499. ———.]—(1) The proper method of enforcing an undertaking given in ct., whether affirmative or negative, is committal, & not attachment. (2) Notice of motion for committal must be personally served, but service of the order containing the undertaking is not necessary. According to the old law, an order of the ct. for the committal of deft. was the proper remedy for the breach of an order to abstain from doing a certain thing. On the other hand, the non-compliance with an order to do a certain thing was punished by attachment, which was issued at the instance of the party aggrieved & at his own risk. This, which was the old law, has been materially altered by R. S. C., Ord. 42, r. 7, which provides in effect that a judgment, whether its form be negative or affirmative, may be enforced either by attachment or by committal, & by R. S. C., Ord. 44, r. 2, which provides that no writ of attachment shall be issued without leave to be applied for on notice. On principle, however, I think that, except in a case falling within R. S. C., Ord. 42, r. 7, attachment can only issue for breach of an order of the ct. commanding resps. to do a certain act, & that in the numerous cases where there is a contempt, not arising from non-compliance with such an order of the ct., the only remedy is by committal (COZENS-HARDY, J.).—

PART VI. SECT. 2.

o. General rule.]—Where the contempt is in its nature criminal, committal should be moved for & not attachment.—*Ex p.* SMITH (1901), 1

S. R. N. S. W. 55.—AUS.

p. ———.]—Committal & not attachment is the appropriate remedy for breach of a prohibitory injunction.

—GOLDEN GATE MINING CO. v. GRANITE CREEK MINING CO. (1890),

5 B. C. R. 115.—CAN.

q. ———.]—An application for the issue of a writ of attachment is technically different from an application for a committal order.—*COOKE v. COOKE*, [1919] 1 I. R. 227.—IR.

Sect. 2.—Distinction between attachment and committal. Sects. 3, 4 & 5: Sub-sect. 1, A. & B. (a).]

D. v. A. & Co., [1900] 1 Ch. 484; 69 L. J. Ch. 382; 82 L. T. 47; 48 W. R. 429.

Annotations:—As to (1) Refd. Carter v. Roberts, [1903] 2 Ch. 312; Re Launder, Launder v. Richards (1908), 98 L. T. 554. As to (2) Refd. Re Launder, Launder v. Richards (1908), 98 L. T. 554.

500. As to enforcing orders for payment of money—Debtors Act, 1869 (c. 62), s. 4.]—Re WARD'S ESTATE, WALLIS v. WARD, [1871] W. N. 163.

501. As to compelling party to obey order made in cause.]—Re EVANS, EVANS v. NOTON, No. 21, ante.

502. As to bail.]—BUIST v. BRIDGE, No. 495, ante. See, also, No. 496, ante.

503. As to officer enforcing.]—CALLOW v. YOUNG, No. 496, ante.

504. —.]—R. v. LAMBETH COUNTY COURT JUDGE & JONAS, No. 899, post.

505. As to necessity for service of notice of motion.]—CALLOW v. YOUNG, No. 496, ante.

506. As to enforcement of undertakings.]—D. v. A. & Co., No. 499, ante.

As to necessity for service of affidavit with notice of motion, see Sect. 5, sub-sect. 7, F. (a), post.

SECT. 3. WHO MAY BE ATTACHED OR COMMITTED.

Privilege from arrest for contempt, see Sect. 8, post.

507. Infant.]—Pltf. being an infant was committed to prison for not obeying a decree.—OLIVER v. KING v. CHALLINOR (1569), Toth. 108; 21 E. R. 138.

See, further, INFANTS & CHILDREN.

508. Married woman.]—A *feme covert* is liable to be arrested for not putting in a separate answer pursuant to an order obtained at her own request.—POWELL v. PRENTICE (1741), Ridg. temp. H. 258; 27 E. R. 822, L. C.

509. — Joint order upon husband & wife—Husband leaving jurisdiction—Necessity for separate order against wife.]—After a joint answer by husband & wife, & amendment of the bill, the husband going abroad, the wife, being the material party, cannot be brought into contempt without a previous order upon her to answer separately.—CARLETON v. McENZIE (1805), 10 Ves. (1st ed.) 442; sub nom. CARLETON v. DYER, 10 Ves. (2nd ed.) 442; 32 E. R. 916, L. C.

Annotation:—Distd. Hardy v. Sharpe (1839), 8 L. J. Ex. Eq. 66.

510. — — Separate answer by wife.]—An attachment having issued against husband & wife jointly the wife can only move under special circumstances to answer separately, when in contempt for not answering jointly.—HARDY v. SHARPE (1839), 3 Y. & C. Ex. 377; 8 L. J. Ex. Eq. 66; 100 E. R. 748.

511. — Disobedience to order of court—In suit instituted by next friend.]—An attachment was ordered to be issued against a married woman for disobeying an order in a suit which she had

instituted by her next friend.—OTTWAY v. WING, WING v. OTTWAY (1811), 12 Sim. 90; 10 L. J. Ch. 208; 59 E. R. 1065.

Annotation:—Refd. Re Turnbull, Turnbull v. Nicholas, [1900] 1 Ch. 180.

512. — —.]—BAKER v. BAKER, No. 451, ante.

513. — —.]—BATTLE v. SEARS, No. 452, ante.

514. — — Obtaining order to answer separately from husband—Suit affecting separate estate.]—

An order was made against a married woman for an attachment for want of an answer in a suit affecting her separate estate, she having obtained an order to answer separately from her husband.—TAYLOR v. TAYLOR (1849), 12 Beav. 271; 19 L. J. Ch. 304; 50 E. R. 1065.

Annotation:—Folld. Bull v. Withey (1863), 32 L. J. Ch. 633.

515. — —.]—A married woman had upon her own application obtained an order to answer separately from her husband, & made default in answering:—Held: an attachment would be issued against her. BULL v. WITHEY (1863), 32 L. J. Ch. 633; 8 L. T. 495; 9 Jur. N. S. 595.

516. — —.]—An attachment for want of answer will issue against a married woman who, having appeared separately, & obtained an order to answer separately, nevertheless allows the time for answering to expire.—THICKNESSE v. ACTON (1851), 21 L. J. Ch. 215; 15 Jur. 1052.

517. — —.]—An order for an attachment may be made *ex p.* against a married woman who has obtained an order to answer separately & has made default in putting in her answer.—HUME v. PATRICK (No. 1) (1862), 30 Beav. 405; 31 L. J. Ch. 424; 8 Jur. N. S. 351; 10 W. R. 238; 51 E. R. 946.

Annotations:—Folld. Bull v. Withey (1863), 32 L. J. Ch. 633. Consd. Hope v. Carnegie (2) (1869), L. R. 7 Eq. 263.

See, further, HUSBAND & WIFE.

518. One of several partners.]—In 1847 Joseph R. & Sons obtained an injunction to restrain N. & W. R. from using the trade mark "J. R. & Sons." Soon afterwards W. R. entered into partnership with his father John R. & with a brother, & the three used the trade mark "J. R. & Sons" with a colourable addition. Upon pltf's. moving to commit W. R.:—Held: pltf's. might move to commit him without bringing his partners before the ct.—RODGERS v. NOWILL (1853), 3 De G. M. & G. 614; 22 L. J. Ch. 404; 20 L. T. O. S. 319; 17 Jur. 171; 1 W. R. 205, 216; 43 E. R. 241, L. J. J. *Annotation:—Mentd. Churton v. Douglas (1859), 28 L. J. Ch. 841.*

519. Not administratrix—When no assets—No personal liability.]—WILLIAMS v. DAVIES, In the Goods of WILLIAMS, No. 551, post.

520. Not members of local board—Breach of undertaking by board—Sequestration against board.] SUTTON v. BARNET LOCAL BOARD, [1877] W. N. 167.

See, further, CORPORATIONS, Vol. XIII., pp. 426, 427; LOCAL GOVERNMENT.

521. Not secretary of friendly society—Sued on behalf of society.]—Application was made that deft. against whom judgment for £28 8s., due to pltf. as sick pay, had been obtained, should be committed on a judgment summons:—Held: the judgment could not be enforced against the

501 i. As to compelling party to obey order made in cause.]—The mode of enforcing obedience to an order is by attachment.—Re O'REILLYS (1828), 2 Hog. 20.—IR.

injunction.]—Where an injunction is granted against one person & his servants, & that person's interest passes to another, the liability of attachment for breach of the injunction does not pass to that other until he is made a party to the bill, & a new injunction is issued against him.—A. G. v. ROGERS (1870), 1 V. R. 132.—AUS.

s. —.]—Persons not named in an injunction are not liable to be committed for breach of it, unless, with knowledge of the injunction, they interfere & commit the act enjoined, in which case they are liable for contempt of ct.—DECOSMOS v. VICTORIA & ESQUIMALT TELEPHONE CO., LTD. (1894), 3 B. C. R. 347.—CAN.

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r. Whether persons not named

secretary personally.—*BIBBY v. IMPERIAL LODGE OF DRUIDS (SECRETARY) (1802)*, Diprose & Gammon, 177.

See, further, FRIENDLY SOCIETIES.

522. Not limited company.]—*Re HOOLEY, Ex p. HOOLEY*, No. 211, *ante*.

523. — Fine appropriate punishment.]—Although upon a rule calling upon a limited co. to show cause why a writ of attachment should not issue against it for contempt of ct., the ct. cannot make an order of attachment, it can where it is satisfied that a contempt has been committed, inflict the appropriate punishment, namely, order the co. to pay a fine.—*R. v. HAMMOND (J. G.) & Co., LTD.*, [1914] 2 K. B. 866; 83 L. J. K. B. 1221; 111 L. T. 206; 30 T. L. R. 491; 58 Sol. Jo. 513, D. C.

See, further, COMPANIES.

524. Unqualified person acting as solicitor—Order to deliver up deeds.]—The ct. has jurisdiction to order an unqualified person to deliver up money & documents, which he has obtained by pretending to be a solr., & should he disobey can attach him.—*Re HULM & LEWIS*, [1892] 2 Q. B. 261; 61 L. J. Q. B. 502; 66 L. T. 683; 8 T. L. R. 533, D. C.

Annotation:—Consd. Re Hurst & Middleton, Middleton v. The Co., [1912] 2 Ch. 520.

SECT. 4.—RIGHT OF PARTY TO BE HEARD.

Position of party in contempt, *see* Part VII., *post*.

525. In own defence.]—The judge of a county ct. made an order on deft. to pay a debt adjudged against him by instalments, or that he be committed to prison. Deft. made default, & thereupon a warrant was issued for his commitment:—*Held*: deft. had a right to be heard in his defence before committal, & an order for his imprisonment, on default of payment, embodied in an order to pay by instalments, was bad.

A party shall not be committed without an opportunity of first being heard in his own defence (*JERVIS, (J.)—ARDEY v. DALE* (1850), Cox, M. & H. 416; 16 L. T. O. S. 365).

526. —.]—A contempt of ct. being a criminal offence, no person can be punished for such unless the specific offence charged against him be distinctly stated, & an opportunity given him of answering.—*Re POLLARD* (1808), L. R. 2 P. C. 106; 5 Moo. P. C. C. N. S. 111; 16 E. R. 457, P. C.

Annotations:—Reid. Chang Hang Kiu v. Piggott, Re Lai Hing Firm, [1909] A. C. 312. *Mentd. Cox v. Hakes* (1890), 15 App. Cas. 506.

SECT. 5.—EVIDENCE AND PROCEDURE.

SUB-SECT. 1.—CONTENTS OF ORDER OR JUDGMENT.

A. In General.

527. Must be definite.]—An order that pltf.'s attorney may inspect & take a copy of a certain

agreement made between pltf. & deft., & stated to be then in the custody of deft. is not sufficiently specific to ground an attachment for disobedience.—*SOANE v. MADDOX* (1845), 5 L. T. O. S. 73.

528. — Order definite in part only—To deliver cash account & pay "amount due."]—On a summons under R. S. C., Ord. 52, r. 25, an order was made requiring resp., a solr., within a specified time to deliver to appct. a cash account showing all moneys received by him for or on account of appct., & to pay to appct. "the amount due" from him to appct., without showing that it was the amount due on the account, or otherwise specifying it. Subsequently, resp. having failed to comply with both these requirements, proceedings were taken for his attachment, & a writ of attachment was issued against him:—*Held*: (1) the order, in so far as regarded the requirement to pay the amount due, was too vague & indefinite to be enforced by attachment, & as to that requirement, the proceedings for attachment were irregular; (2) neither the order nor the proceedings for attachment could be severed so as to admit of their being treated as valid in respect of the earlier requirement to deliver a cash account, & consequently the proceedings for attachment must be set aside, & the writ discharged.—*Re WEATHERLEY* (1918), 88 L. J. K. B. 482; 120 L. T. 431; 63 Sol. Jo. 100, C. A.

Indorsement on order or judgment.]—*See* Subsect. 4, C., *post*.

B. Statement of Time for Compliance.

(a) In General.

See R. S. C., Ord. 41, r. 5.

529. Sufficiency of statement—"Forthwith."]

—An order of the ct. for the delivering up of a deed "forthwith" is a sufficient expression of time within the meaning of Cons. Ord. 23, r. 10.—*THOMAS v. NOKES* (1868), L. R. 6 Eq. 521; 16 W. R. 905.

Annotations:—Consd. Thomas v. Nokes (1894), 58 J. P. 672; *Halford v. Hardy* (1899), 81 L. T. 721. *Reid. Carter v. Roberts*, [1903] 2 Ch. 312.

530. —.]—(1) On the trial of this action on July 6, 1899, an order was taken by consent that all further proceedings should be stayed, deft. by his counsel undertaking "forthwith" to execute a certain draft indenture. Pltf. having on Aug. 29, 1899, requested deft. to execute this indenture in accordance with the terms of his undertaking, & deft. having neglected to do so, pltf. now moved that a writ of attachment might be issued against deft. for the breach of his undertaking. It appeared that no proper copy of the judgment had been served upon deft., as the copy served was not indorsed with the memorandum required by R. S. C., Ord. 41, r. 5:—*Held*: there ought to be service in accordance with R. S. C., Ord. 41, r. 5, or a four-day order, & an order therefore would be made that defts. should on or before Dec. 5, or

to take examination.]—*ANDERSON v. PETERS* (1920), 1 W. W. R. 679.—*CAN.*

PART VI. SECT. 5, SUB-SECT. 1.—B. (a).

529 i. Sufficiency of statement—"Forthwith."]—A direction to do an act "forthwith" is sufficient.—*WALLACE v. ACRE, LIVINGSTON v. ACRE* (1869), 2 Ch. Ch. 392.—*CAN.*

529 ii. —.]—*LOANBY v. EGAN* (1894), 40 N. S. R. 74.—*CAN.*

529 iii. —.]—An order to perform an act "forthwith" means within a reasonable time.—*MACKINNON v. PALMER* (1844), 7 I. Eq. R. 203.—*IR.*

(1905), 31 I. L. T. 221.—*IR.*

525 iii. — Stranger—Ex parte proceeding.]—*Re BRADY* (1828), 1 Mol. 254.—*IR.*

PART VI. SECT. 5, SUB-SECT. 1.—A.

527 i. Must be definite—Order for examination—Not stating questions to be answered.]—Where an order is made requiring deft. to answer certain questions, the order must indicate clearly what questions deft. is directed to answer.—*WATT v. KNOX* (1914), 27 W. L. R. 234.—*CAN.*

527 ii. — Not stating who was

525 i. In own defence.]—No one should be punished for contempt of ct. unless an opportunity of answering the specific charge against him is afforded before sentence is passed.—*R. v. EVANS* (1915), 8 W. W. R. 444; 21 B. C. R. 322.—*CAN.*

525 ii. —.]—Where a person has been arrested, although guilty of contempt, the ct. must not proceed at once to punish him but must give him an opportunity of showing the ct. the circumstances in which the act was done.—*SMITH v. MOLLOY*

Sect. 5.—Evidence and procedure: Sub-sect. 1, B. (a) & (b) i. & ii.; sub-sects. 2 & 3, A.]

subsequently within four days of the service of the order, execute the deed tendered to them by plff.

I have consulted my fellow judges, & we are all of opinion that the undertaking ought to have been served, or, at any rate, notice ought to have been given, that the order was to be complied with within a certain time. This applies to a positive undertaking only. A negative undertaking might undoubtedly be enforced without any service at all. If a man were to undertake by his counsel, for instance, not to erect a wall above a certain height, I should have no hesitation, as a matter of practice, in sending him to prison should he fail to abide by his word. A positive undertaking is a different thing (KEKEWICH, J.).

(2) Having regard to *Thomas v. Nokes* [No. 529, ante], I think that, notwithstanding what was said in *Gilbert v. Endean* [9 Ch. Div. 259], it must be held that the use of the word "forthwith" dispenses with the necessity for fixing a time (KEKEWICH, J.).—*HALFORD v. HARDY* (1899), 81 L. T. 721; 44 Sol. Jo. 90.

Annotations:—As to (1) *Consd. D. v. A. & Co.*, [1900] 1 Ch. 481. *Expld. Re Launder, Launder v. Richards* (1908), 98 L. T. 551. *Reid. Carter v. Roberts*, [1903] 2 Ch. 312. As to (2) *Distd. Re Launder, Launder v. Richards* (1908), 98 L. T. 554. *Reid. Carter v. Roberts*, [1903] 2 Ch. 312.

531. In what orders.]—General Ord. 12 of Aug. 26, 1811, amended by the General Ords. of Apr. 11, 1812, which requires the time to be stated for doing any act ordered or decreed, does not apply to any orders or decrees but those made in a suit, notwithstanding the words "every order or decree" therein used.—*Re BLAKE & YOUNG* (1816), 7 L. T. O. S. 108; 10 Jur. 168.

(b) *Omission to State.*

i. *In General.*

532. Allowance of reasonable time.]—Where an order does not limit a certain time within which something is to be done a reasonable time within all the circumstances must be taken to be allowed, & a committal for contempt will not be made where only such reasonable time has expired.—*Re PATRICK, BILLS v. TATHAM* (1888), 32 Sol. Jo. 798.

533. Appointment subsequently made by registrar—Appearing in indorsement—Order in Probate Division.]—The provision of R. S. C., Ord. 41, r. 5, that every order requiring any person to do an act thereby ordered, shall state the time within which the act is to be done, is not sufficiently complied with if no time is stated in the order, but an appointment is subsequently made by the registrar & appears in an endorsement made on the order.

An order made by the Divorce Div. for the attendance of a husband before one of the registrars for the purpose of being examined as to his means contained the defect above referred to:—*Held: a writ of attachment against him for contempt of ct. in failing to attend the appointment before the registrar was wrongly issued.*—*TOWNEND v. TOWNEND* (1905), 93 L. T. 680; 22 T. L. R. 50; 50 Sol. Jo. 42, C. A.; *subsequent proceedings*, 22 T. L. R. 128, C. A.

Annotations:—*Expld. Re Tuck, Murch v. Loosemore* (1906), 75 L. J. Ch. 497. *Mentd. Re R.* (1906), 75 L. J. Ch. 421.

ii. *Fixing Time by Four-Day Orders, etc.*

See R. S. C., Ord. 41, r. 5.

534. General rule.]—(1) The fact that a person is actually in ct. when an order is made against him to do some act, or the fact that he is otherwise aware of the order, is no reason for dispensing with personal service as required by R. S. C., Ord. 41, r. 5, for the purpose of founding a motion

for attachment or sequestration in a case where the person is not evading such service.

(2) In drawing up an order directing a person to do an act within a limited time the registrar may insert as a matter of course, & without any special instructions, the words "or subsequently within four days after service of the order."

It must not for a moment be understood that any doubt is cast by us upon the result of disobeying an order not to do a thing of which notice can be proved to have reached deft. But there is a wide distinction between such an injunction & an order commanding deft. to do something within a definite time. R. S. C., Ord. 41, r. 5, deals only with an order of the latter class, & for the protection of the liberty of the subject, requires the indorsement of a memorandum warning deft. that the consequence of not complying with the order may be the issue of an attachment. There is no such requirement where the order is prohibitive only (COZENS-HARDY, L.J.).—*Re TUCK, MURCH v. LOOSEMORE*, [1906] 1 Ch. 692; 75 L. J. Ch. 497; 94 L. T. 597; 22 T. L. R. 425, C. A.

Annotations:—As to (1) *Reid. Re Launder, Launder v. Richards* (1908), 98 L. T. 551; *Re Suarez, Suarez v. Suarez*, [1918] 1 Ch. 176. *Generally, Mentd. Haydon v. Haydon*, [1911] 2 K. B. 191.

535. Jurisdiction of court to grant—No time fixed in prohibitory order of Court of Appeal—Mandatory injunction in negative form.]—*MANSELL v. JONES*, [1905] W. N. 168, C. A.

536. In respect of what orders or judgments time fixed—Not judgments at common law to recover money.]—(1) An ordinary judgment for the recovery of a debt is not an order to pay money into ct. or do any other act in a limited time within the meaning of R. S. C., Ord. 43, r. 6, nor a judgment for the recovery of any property other than land or money within R. S. C., Ord. 42, r. 6, & therefore cannot be enforced by a writ of sequestration.

(2) In a proceeding founded upon contempt it is contrary to principle to enter an order upon future possible contempt.—*HULBERT & CROWE v. CATHCART*, [1891] 1 Q. B. 244; 63 L. J. Q. B. 121; 70 L. T. 558, D. C.

Annotations:—As to (1) *Consd. Re Oddy, Major v. Harness*, [1906] 1 Ch. 93. *Generally, Mentd. Hood-Barrs v. Cathcart* (1894), 71 L. T. 11.

537. ———.]—A judgment that plff. do recover from deft. a sum of money cannot be supplemented by an order fixing a time for the payment of the money by deft.

Plff. in an action against a trustee for misapplication of trust funds obtained judgment against him for recovery by plff. from deft. of a sum of money representing the loss to the trust estate instead of judgment in the usual form for payment of the money to plff. by deft.:—*Held: the judgment could not be supplemented by a four-day order so as to found a right to issue a writ of attachment against deft. in default of payment within the stipulated time.*—*Re ODDY, MAJOR v. HARNESS*, [1906] 1 Ch. 93; 75 L. J. Ch. 141; 94 L. T. 146; 54 W. R. 201; 50 Sol. Jo. 155, C. A.

538. Where necessary—Breach of undertaking forthwith to execute indenture.]—*HALFORD v. HARDY*, No. 530, ante.

539. ——— No time fixed—In undertaking.]—*CARTER v. ROBERTS*, No. 484, ante.

540. ——— In order.]—*Re WILDE*, [1910] W. N. 128, C. A.

Annotation:—*Reid. Re Weatherley* (1918), 88 L. J. K. B. 482.

541. ——— Order extending time—Expiry of time before order drawn up.]—Before a client who has obtained an order against his solr. for delivery of his bill of costs within a fixed time, which time

is afterwards extended by order, can obtain leave to issue a writ of attachment for non-compliance with the orders, both orders must be drawn up & served, or if the extended time given by the second order has expired before that order has been drawn up, a four-day order must be obtained & served before moving for attachment.—*Re SEAL, Re SEAL & EDGELOW*, [1903] 1 Ch. 87; 72 L. J. Ch. 58; 87 L. T. 731.

542. When court will grant—To compel payment of costs—Personal service of petition.]—The ct. will not grant the four-day order for the purpose of compelling the payment of costs, without personal service of the petition on the party sought to be brought into contempt.—*Re BARLOW, Ex p. BOUSFIELD* (1832), 1 L. J. Bcy. 46, Ct. of R.

Service of order or judgment.]—*See* Sub-sect. 3, *post*.

543. — Not when defendant not in default—Order fixing time for performance granted.]—Where a decree directing an act to be done, has been drawn up without fixing a time within which the act is to be done, the decree is not rendered ineffectual by the operation of Ords. 11 & 12, of Aug. 1841, but the ct. will, upon motion for that purpose, fix a time for the performance of the act. The four-day order ought not to be made where, as in this case, deft. was not in default; but the ct. might then order deft. to perform the decree in a given time, & his failure to comply with that order would be a default, on which pltf. might afterwards act (*WIGRAM, V.-C.*).—*NEEDHAM v. NEEDHAM* (1842), 1 Harc. 633; 6 Jur. 1081; 66 E. R. 1183; *affd.* (1813), 12 L. J. Ch. 378, L. C. *Annotation*:—*Refd.* *Townend v. Townend* (1905), 93 L. T. 680.

544. Former practice.]—*ROBY v. SCHOLES* (1853), 20 L. T. O. S. 231; 1 W. R. 118.

SUB-SECT. 2.—ENTRY OF ORDER OR JUDGMENT.

See, now, R. S. C., Ord. 55, r. 74, Ord. 62, r. 2.

545. Effect of delay.]—A detainer was lodged on an attachment for costs which had been ordered to be paid, at the Q. B. prison, against B., then a prisoner in respect of other matters. The order to pay had been carried to the proper office, & signed & stamped with the seal of the office, but by some mistake was not entered. B. moved to discharge the order, & pending the motion the entry was made:—*Held*: the order, attachment & entry should all be discharged.—*TOLSON v. JERVIS* (1845), 8 Beav. 361; 14 L. J. Ch. 373; 5 L. T. O. S. 301; 50 E. R. 143.

546. Order made in chambers.]—Attachment for contempt of ct. will not be granted for disobedience to an order made in chambers unless the order be duly entered in accordance with Cons. Ord. 35, r. 32.—*BALLARD v. TOMLINSON* (1883), 52 L. J. Ch. 656; 48 L. T. 515; 31 W. R. 563.

SUB-SECT. 3.—SERVICE OF ORDER OR JUDGMENT.

A. When Personal Service necessary.

547. General rule.]—No process of contempt is to issue against deft. for disobedience to an order,

unless he is served with a writ of execution of the order under the seal of the ct.—*MOYSER v. PEACOCK* (1667), 3 Rep. Ch. 22; 21 E. R. 717.

548. —.]—A rule of the Ct. of K. B. is not complete, nor can a party be brought into contempt for not obeying it, until it has been served upon him.—*R. v. LANCASHIRE J.J.* (1828), 8 B. & C. 593; 2 Man. & Ry. K. B. 519; 1 Man. & Ry. M. C. 458; 6 L. J. O. S. M. C. 119; 108 E. R. 1162.

Annotations:—*Consd. R. v. Barnet Sanitary Authority* (1876), 1 Q. B. D. 558. *Mentd. R. v. Derbyshire J.J.* (1845), 7 Q. B. 193.

549. —.]—The ct. will not grant an attachment without personal service, in any case where the party applying has another remedy.—*Re LOWE & JOHNSON* (1833), 4 B. & Ad. 412; 110 E. R. 510.

Annotation:—*Refd.* *Coston v. Blackburn* (1872), 27 L. T. 117.

550. —.]—Before a party can be said to be in contempt for disobeying a rule of ct. it is essential that such rule should be obtained & be duly served.—*BATH CORPN. v. PINCH* (1837), 4 Scott, 299; 1 Jur. 104.

551. —.]—(1) As a general rule an attachment for disobeying an order of the ct. will not be granted unless the order has been personally served, or it is shown that personal service is evaded.

(2) An order that deft. as administratrix of the effects of the deceased do pay pltf.'s costs of a suit, is tantamount to an order that such costs should be paid out of the estate, & does not render pltf. personally liable. Where, therefore, such an order was made, & there were no assets, the ct. refused an attachment for non-payment of pltf.'s costs.—*WILLIAMS v. DAVIES, In the Goods of WILLIAMS* (1861), 3 Sw. & Tr. 437; 4 New Rep. 301; 33 L. J. P. M. & A. 127; 10 L. T. 583; 28 J. P. 664; 164 E. R. 1311.

552. — Effect of waiver of service.]—A writ of *habeas corpus* can be properly served only by delivering the original writ itself to the person served. If the original writ is not so served it is impossible for the person served by appearing to the writ & waiving its proper service to obey the writ, & consequently he cannot disobey it & so commit contempt of ct.—*R. v. ROWE* (1894), 71 L. T. 578; 11 T. L. R. 29; 15 R. 119, D. C.

553. —.]—*Re TUCK, MURCH v. LOOSEMORE*, No. 534, *ante*.

554. Order to pay money.]—An order of the ct. that deft. should pay a certain sum of money, being shown to deft. at the time of making a personal demand of it, a copy of such order not having been personally served on deft. himself, although a copy had been previously served on the attorney is not sufficient to entitle pltf. to an attachment.

The service of a copy of the rule is indispensable (*per Cur.*).—*BRODENIK v. TEED* (1815), 1 Price, 401; 145 E. R. 1443.

555. —.]—Motion for an attachment against an attorney for not paying money pursuant to the master's *allocatur* & that service of the rule by fixing it up in the office might be deemed good service, upon an affidavit that the party kept out of the way to avoid personal service:—*Held*: personal service could not be dispensed with.—*Re* — (1822), 1 Dow. & Ry. K. B. 529.

PART VI. SECT. 5, SUB-SECT. 3.—A.

547 i. General rule.]—Before an attachment can issue for non-performance of a decree or order of the ct., personal service of such decree or order must be effected.—*WHISTLER v. AYLWARD, Re FITTON* (1843), *Drury tem v. Sug. 1*.—*IR.*

547 ii. —.]—*MACKINNON v. PALMER* (1844), 7 I. Eq. R. 203.—*IR.*

a. Order directing questions to be answered.]—Where an order is made requiring deft. to answer certain questions, the order must be served personally; upon deft.—*WATT v. KNOX* (1914), 27 W. L. R. 234.—*CAN.*

b. Order to attend for examination.]—A motion to commit deft. for his non-attendance for examination pursuant to a special order, was refused where the order had not been previously served.—*McAVILLA v. McAVILLA* (1876), 6 P. R. 311.—*CAN.*

Sect 5.—Evidence and procedure: Sub-sect. 3, A. & B. (a), i. & ii.]

556. — Into court.]—*Re STEELE, GREEN v. KING* (1879), 23 Sol. Jo. 906.

557. Order to pay costs.]—A personal demand is absolutely necessary before moving for an attachment for non-payment of costs.—*STUNNELL v. TOWER* (1834), 1 Cr. M. & R. 88; 2 Dowl. 673; 4 Tyr. 862; 3 L. J. Ex. 353; 149 E. R. 1006.

Annotation:—*Folld. Albin v. Toomer* (1835), 1 Har. & W. 215.

558. —.]—The service of an *allocatur* for the payment of costs must be personal before an attachment will be granted.—*DICAS v. WARNE* (1835), 1 Hodg. 91; 1 Scott, 537.

559. —.]—An attachment against an attorney for non-payment of costs in pursuance of the master's *allocatur* will not be granted unless there has been an absolute personal service.—*ALBIN v. TOOMER* (1835), 1 Har. & W. 215.

560. —.]—Where an order has been made for payment of costs the ct. will not grant an attachment for non-payment of them without an affidavit of personal service of the original order on the party to be attached.—*THOMAS v. CROWTHER* (1861), 2 Sw. & Tr. 501; 10 W. R. 861; 164 E. R. 1091.

Annotations:—*Consd. Williams v. Davies* (1864), 33 L. J. P. M. & A. 127. *Refd. Morris v. Freeman* (1878), 3 P. D. 65.

561. Order to deliver bill of costs.]—A motion was made for the attachment of a solr. for non-compliance with an order of the ct. upon him to deliver a bill of costs within a fortnight. It appeared that the order had not been personally served upon him, but had been left with his clerk at his office. The solr. had written giving reasons for his delay & promising the bill of costs during the then ensuing week:—*Held*: personal service of the order was necessary & the necessity for such personal service had not been waived by the letter, & therefore the motion for attachment must be dismissed.—*Re CUNNINGHAM* (1886), 55 L. T. 766.

562. — With order extending time for compliance.]—*Re SEAL, Re SEAL & EDGELOW*, No. 541, *ante*.

See, further, SOLICITORS.

563. Prohibitory order.]—Although upon an order restraining a party from doing a certain act a writ of injunction does not issue, & need not be produced upon motion to commit for a breach of the order, personal service of the order must be shown to have been effected.—*GOUGH v. MARSHALL* (1860), 8 W. R. 410.

Compare, Sub-sect. 3, B. (a), ii., post.

See, further, INJUNCTION.

See, further, CORPORATIONS, Vol. XIII., p. 427, No. 1506.

564. Order against corporation—Personal service upon director—Where director sought to be attached.]—Obedience to an order made against a corpn. will not be enforced, under R. S. C., Ord. 42, r. 31, by the attachment of a director of the corpn. unless the order has been served personally upon the director.—*MCKEOWN v. JOINT STOCK INSTITUTE, LTD.*, [1899] 1 Ch. 671; 68 L. J. Ch. 390; 80 L. T. 641; 6 Mans. 338.

Annotation:—*Consd. R. v. Poplar R. C., Ex p. L. C. C., Ex p. Metropolitan Asylums Board* (1921), 38 T. L. R. 5.

c. Prohibitory orders — Distinguished from mandatory orders.]—Only orders requiring a person not to do a thing need be served personally, there being a distinction between them & those requiring a person to do an act.—*FRASER v. KIRKPATRICK* (1906), 4 W. L. R. 1.—*CAN.*

d. —.]—*MORRIS v. MORRIS* (1825),

1 Hog. 238.—*IR.*

PART VI. SECT. 5, SUB-SECT. 3.— B. (a) i.

566 i. Presence of party in court—*When order made—Fact stated in order.]*—The ct. will not attach a person for disobedience to an order of the ct.

Service of subpoena.]—*See EVIDENCE.*

Service of arbitrator's award.]—*See ARBITRATION, Vol. II., p. 579, Nos. 2099–2106.*

Necessity to specify service & production of orders—In affidavit in support of notice of motion.]—*See Sub-sect. 7, E. (b), post.*

B. When Personal Service dispensed with.

(a) Knowledge of Respondent.

i. In General.

Evading service with knowledge of order, *see Sub-sect. 3, B. (b), post.*

565. Order made by consent.]—Deft.'s goods which had been taken in execution, were, by rule of ct. made on hearing counsel on both sides, ordered to be restored. Deft. afterwards, upon affidavit that the goods were not restored pursuant to the rule, moved for an attachment of contempt, which was granted absolutely without affidavit of service of the former rule, which being made by consent, pltf. must take notice of, & comply with at his peril.—*TOWNSEND v. BAKER* (1736), Barnes, 31; 91 E. R. 791.

Annotation:—*Refd. Chaunt v. Smart* (1796), 1 Bos. & P. 477.

566. Presence of party in court—When order made.]—Where a person attends a cause to which he is a deft. the whole time of the hearing, & had notice of the decree by being present when it was pronounced in ct., if he does any act that is a contravention to the decree he is guilty of a contempt, & punishable for it notwithstanding the decretal order is not drawn up (*LORD HARDWICKE, C.*)—*SKIP v. HARWOOD* (1747), 3 Atk. 564; 26 E. R. 1125, L. C.

Annotations:—*Refd. Pengree v. Jonas* (1787), 2 Bro. C. C. 141. *Mentd. Johnson v. Evans* (1841), 7 Man. & G. 240; *Aspinall v. L. & N. W. Ry.* (1853), 11 Hare, 325; *Ekins v. Brown* (1854), 1 Ecc. & Ad. 400; *Aitchison v. Lee* (1856), 3 Drew. 637.

567. —.]—The practice of personal service, as a foundation for process of contempt, dispensed with, where the party must have had notice, having been present in ct. when order made, as upon a short order for execution of a decree.—*RIDER v. KIDDER* (1806), 12 Ves. 202; 33 E. R. 77, L. C.

Annotations:—*Mentd. George v. Howard & Bank of England* (1819), 7 Price, 646; *Dummer v. Pitcher* (1833), Coop. temp. Brough, 257; *Sims v. Thomas* (1840), 12 Ad. & El. 536; *Freeman v. Tatham* (1846), 5 Hare, 329; *Barrack v. McCulloch* (1856), 3 K. & J. 110; *Nicholson v. Mulligan* (1869), 17 W. R. 659; *Ayerst v. Jenkins* (1873), L. R. 16 Eq. 275; *Phillips v. Probyn* (1899), 68 L. J. Ch. 401; *Re Policy No. 6402 of Scottish Equitable Life Assce. Soc.*, [1902] 1 Ch. 282.

568. — Fact stated in order.]—On a motion by pltf. for attachment, or committal of deft. for disobedience to an order, the order must, under R. S. C., Ord. 52, r. 4, be brought in its exact form to the attention of deft., contemporaneously with, though it need not necessarily be attached to, the notice of motion on the usual affidavit of service, unless the ct. is satisfied that the order has been brought to his knowledge in some other way, as where deft. himself appeared in ct. & personally consented to or opposed the order & the fact is stated on the face of the order itself; & the rule applies even where the order has been made by the consent of deft.'s counsel,

requiring him to do a given act within a given time, unless the order is served upon him. The fact that the person sought to be attached for disobedience was present in ct. when the order was made, which fact was recited in the order, is not sufficient to dispense with service.—*CENTURY INSURANCE CO., LTD. v. LARKIN*, [1910] 1 I. R. 91.—*IR.*

there being no difference in this respect between a consent order & an adverse order.—*HALL & Co. v. TRIGG*, [1897] 2 Ch. 219; 66 L. J. Ch. 651; 76 L. T. 807; 45 W. R. 703; 41 Sol. Jo. 573.

569. ———.]—*Re TUCK, MURCH v. LOOSEMORE*, No. 534, *ante*.

On making of prohibitive order.]—*See* Subsect. 3, B. (a), ii., *post*.

570. *Circumstances denoting knowledge.*]—Under certain circumstances, where there is reason to believe that the copy rule, & *allocatur*, have come to the knowledge of deft., an attorney, a rule *nisi* for an attachment will be granted, although strict personal service has not been effected.—*R. v. DIGNAM* (1835), 4 Dowl. 359.

571. ———.]—Money had been wrongfully detained by an attorney from his client, & a rule requiring him to pay that money over had been made absolute against him, it being clearly shown that he was aware of what the rule required him to do:—*Held*: a rule would be granted for an attachment absolute in the first instance, he not having complied with the rule.—*Ex p. BURGIN* (1841), 1 Dowl. N. S. 292.

572. ———.]—*Substituted service previously directed—Defendant appearing by counsel.*]—*WHYTE-MELVILLE v. WHYTE-MELVILLE* (1888), 4 T. L. R. 491.

573. *Admission of receipt of copy— & notice of call.*] Where there had not been personal service of the rule of ct. & master's *allocatur*, but copies had been left, & notice had been given of a call that would be made, the ct. made a rule for an attachment against an attorney absolute, where on showing cause against the rule *nisi*, he did not deny having received the papers & notice.—*BOTTOMLEY v. BELCHAMBER* (1835), 1 Har. & W. 362.

ii. Prohibitory Orders.

574. *General rule—Notice sufficient without service.*]—Deft. was committed for breach of an injunction after notice of its having been obtained, although the order for the injunction had not been served. *VANSANDAU v. ROSE* (1820), 2 Jac. & W. 264; 37 E. R. 628, L. C.

Annotation:—*Consd. United Telephone Co. v. Dale* (1884), 25 Ch. D. 778.

575. ———.]—A party who has notice of an order of the ct., is bound by it from the time the order is pronounced, & if the order be for an injunction, & the party after notice be guilty of a breach of it, he may be committed for the contempt without the production of the writ of injunction, & although the writ has not actually issued.—*M'NEIL v. GARRATT* (1841), Cr. & Ph. 98; 10 L. J. Ch. 207; 5 Jur. 836; 41 E. R. 427, L. C.

Annotation:—*Refd. Cobbett v. Ludlam* (1855), 11 Exch. 446.

576. ———.]—*HEYWOOD v. WAIT*, No. 86, *ante*.

577. ———.]—In order to justify the committal of deft. for breach of an injunction it is not necessary that the order granting the injunction should have been served upon him if it is proved that he had notice of the order *aliunde* & knew that pltf. intended to enforce it. This rule is not limited to cases in which a breach is committed before there has been time for pltf. to get the order drawn up & entered.—*UNITED TELEPHONE*

570 i. *Circumstances denoting knowledge—Presence in court of counsel & solicitor.*]—A party may be attached for disobeying an order made in presence of his counsel & solr., although the order has not been served on him.—

Co. v. DALE (1884), 25 Ch. D. 778; 53 L. J. Ch. 295; 50 L. T. 85; 32 W. R. 428.

Annotations:—*Mentd. D. v. A.*, [1900] 1 Ch. 484; *Dunlop Pneumatic Tyre Co. v. Mosley*, [1904] 1 Ch. 612; *Re Launder, Launder v. Richards* (1908), 98 L. T. 554.

578. ———.]—*PEDLEY v. COOPER* (1892), 36 Sol. Jo. 769.

579. ———.]—*Order not drawn up.*]—If there is an injunction granted against deft. restraining him from doing certain acts, & he is aware of it, he certainly cannot think that he can with impunity break that injunction because time has not elapsed for an order to be properly drawn up & served upon him. He is not, so to speak, between the date of the order, & the date on which the order can be drawn up & served upon him, to set at defiance the order of the ct. There can be no doubt as to the jurisdiction of the ct. to commit a man who knowingly breaks an injunction which has been granted, to his knowledge, restraining him from doing an act, if he wilfully breaks it before an order is drawn up & served upon him (*ROMER, L.J.*).—*INCANDESCENT GAS LIGHT CO. v. RIEMER* (1900), 17 R. P. C. 378.

580. *What is sufficient notice—Presence in court—Of defendant—Or his attorney.*]—It is no excuse for proceeding at law after an injunction is granted, that it was not sealed, for where deft. or his attorney have been present on an order for an injunction, & they have proceeded at law before it has been sealed, the ct. has considered it as a contempt, & committed the persons for it.—*ANON.* (1717), 3 Atk. 567; 20 E. R. 1127, L. C.

581. ———.]—*HEYWOOD v. WAIT*, No. 86, *ante*.

582. ———.]—*Of defendant's counsel without instructions—Without notice to solicitor.*]—The presence of deft.'s counsel in ct. without instructions, when an interim injunction is continued against him in the absence of & without notice to his solr. does not constitute such notice to deft. as will justify committal for contempt for a subsequent breach of the order.—*CARROW v. FERRIOR, DUNN v. FERRIOR* (1868), 37 L. J. Ch. 569; 17 L. T. 536.

583. ———.]—*During motion—Absence when order pronounced.*]—It is a contempt by persons who commit a breach of an injunction if they were present in ct. during the motion, though they were absent when the order was pronounced.—*HEARN v. TENNANT* (1807), 14 Ves. (2nd ed.) 136; 33 E. R. 473; *sub nom. OSBORNE v. TENNANT*, 14 Ves. (1st ed.) 136, L. C.

Annotations:—*Consd. James v. Downes* (1812), 18 Ves. 522. *Refd. Lewes v. Morgan & Lewis* (1818), 5 Price, 518; *Durant v. Moore* (1830), 9 L. J. O. S. Ch. 12; *United Telephone Co. v. Dale* (1884), 25 Ch. D. 778.

See, also, Nos. 534, 566, ante.

584. ———.]—*Notice given in precincts of court—By plaintiff's representative.*]—*PEDLEY v. COOPER* (1892), 36 Sol. Jo. 769.

585. ———.]—*Notice by information.*]—The exception to the rule, requiring personal service of an order of injunction, where the party was present, when the order was made, extended to notice by information.—*KIMPTON v. EVE* (1813), 2 Ves. & B. 349; 35 E. R. 352, L. C.

Annotations:—*Consd. Re Bishop, Ex p. Langley, Ex p. Smith* (1879), 13 Ch. D. 110. *Refd. Durant v. Moore* (1830), 9 L. J. O. S. Ch. 12.

586. ———.]—*Notice by telegram.*]—A sheriff's officer & an auctioneer proceeded with the sale of

KANE v. KANE (1867), 16 W. R. 99.—*IR.*

PART VI. SECT. 5, SUB-SECT. 3.—
B. (a) ii.

586 i. *What is sufficient notice—Notice by telegram.*]—A person who

receives telegraphic notice of an injunction & fails to conform his conduct thereto will be attached.—*CANADIAN PACIFIC NAVIGATION CO. v. VAN-COUVER CORPN.* (1892), 2 B. C. R. 298.—*CAN.*

Sect. 5.—Evidence and procedure: Sub-sect. 3, B.
(a) *ii., (b), (c) & (d).]*

the property of a trader seized under a *fi. fa.* after they had received notice by a letter from the debtor's solr. that he had filed a liquidation petition, & had also received notice by telegram that the Ct. of Bkpcy. had made an order restraining further proceedings under the writ:—*Held*: the sheriff's officer & the auctioneer had been guilty of contempt of ct. & they must pay the costs of a motion to commit them.—*Re BRYANT* (1876), 4 Ch. D. 98; 35 L. T. 489; 25 W. R. 230.
Annotation:—*Consd. Re Bishop, Ex p. Langley Ex p. Smith* (1879), 13 Ch. D. 110.

587. ———.]—(1) Sufficient notice of the granting of an injunction may be given by telegram, but if it is sought to commit for contempt a person who, after receiving such a notice, disregards it, the ct. must decide upon the particular facts whether he had in fact notice of the injunction, & it is the duty of those who ask for the committal to prove this beyond reasonable doubt. (2) A person who has violated an injunction will not be committed for contempt when he swears that, though he had received notice of it by telegram he *bona fide* believed that no injunction had been granted, & the circumstances show that such a belief was not unreasonable.—*Re BISHOP, Ex p. LANGLEY, Ex p. SMITH* (1879), 13 Ch. D. 110; 49 L. J. Bcy. 1; 41 L. T. 388; 28 W. R. 174, C. A.

(b) *Respondent evading Service.*

588. General rule.—Where a person keeps out of the way to avoid being served personally with a rule, preparatory to obtaining attachment against him, & it is clearly made out to the satisfaction of the ct., the ct. will dispense with personal service.—*GREEN v. PROSSER* (1833), 2 Dowl. 99.

589. ———.]—*WILLIAMS v. DAVIES, In the Goods of WILLIAMS*, No. 551, *ante*.

590. ———.]—The rule that requires personal service of an order before a writ of attachment can be issued for disobedience of it is subject to an exception where the order has come to the knowledge of the person sought to be attached & he evades service of it.—*KISLER v. TETTMAR*, [1905] 1 K. B. 39; 74 L. J. K. B. 1; 92 L. T. 36; 53 W. R. 230; 21 T. L. R. 21, C. A.

Annotation:—*Reid. Re Tuck, Murch v. Loosemore*, [1906] 1 Ch. 92.

591. ———.]—*Re TUCK, MURCH v. LOOSEMORE*, No. 534, *ante*.

592. ———.]—**Efforts to effect service must be shown—& reasons for belief of evasion.**—Where it is clearly shown that an attorney keeps out of the way to avoid being served with a rule, the ct. will allow service upon his clerk to be good service. The affidavit, however, must specify the endeavours to effect a service, & the reasons for believing that he is in town & avoiding service.—*HINTON v. DEAN* (1835), 4 Dowl. 352.

593. Order left at respondent's house.—A mayor of a corpn. declined to swear in the mayor elect & after a peremptory mandamus an attachment was moved for against him, upon affidavit that he kept out of the way, so that there should not be personal service made upon him, & that the writ had been left at his house:—*Held*: he would be ordered to show cause.—*R. v. TOOLEY* (1699), 12 Mod. Rep. 312; 88 E. R. 1343.

594. ———.]—A rule for an attachment against an exor. for not accounting pursuant to a rule of

ct. was made absolute, though that rule had not been personally served, upon an affidavit that deft. kept out of the way to avoid being served & that a copy had been left at the house with the daughter of deft.—*Re BARWICK* (1835), 3 Dowl. 703; 5 Tyr. 431.

Annotation:—*Reid. Re Guard* (1842), 6 Jur. 916.

595. ———.]—The Ct. of C. P. granted an attachment for non-payment of costs against an attorney without personal service, where the party employed to serve the rule was not permitted to enter the house, but upon retiring, saw the attorney run into the house, & then returned & left a copy of the rule.—*ANON.* (1836), 5 L. J. C. P. 312.

596. Respondent absconding—After refusal to obey.—The practice of personal service, as a foundation for process of contempt was dispensed with where a party declared he would not execute an order, & absconded to avoid it.—*DE MANNEVILLE v. DE MANNEVILLE* (1806), 12 Ves. 203; 33 E. R. 78.

597. Respondent leaving jurisdiction—With knowledge of order.—An order was made in a divorce suit that "the child, issue of the marriage between petitioner & resp., be forthwith delivered up to & remain in the custody of petitioner until further order of the ct., but that such child be not removed out of the jurisdiction of the ct. without its sanction." This order was brought to the knowledge of resp., who took the child out of the jurisdiction & retained its custody. Legal service was not effected upon him. Upon *ex p.* application by petitioner:—*Held*: the ct. would order a writ of attachment to issue against resp.—*FAVARD v. FAVARD* (1896), 75 L. T. 664.

Annotation:—*Apld. GORDON v. GORDON*, [1903] P. 141.

598. ———.]—Where a person, against whom an order had been made in the K. B. Div. ordering him to do a particular act, disobeyed the order with full knowledge of its having been made & went out of the jurisdiction before it had been formally served upon him, the ct. on an application for the issue of a writ of sequestration to enforce the order, dispensed with personal service of the order disobeyed, & directed the writ to issue.—*R. v. WIGAND*, [1913] 2 K. B. 419; 82 L. J. K. B. 735; 109 L. T. 111; 29 T. L. R. 509.

Annotation:—*Reid. Re Suarez, Suarez v. Suarez*, [1918] 1 Ch. 176.

599. ———.]—On an application for leave to issue a writ of sequestration for the enforcement of an order for payment into ct., the ct. may dispense with personal service of an order fixing a time for payment into ct., if it is satisfied that the defaulter knew of the order & is keeping out of the way to escape service.

Deft. is in contempt & by keeping away prevents any attachment of his person. A writ of sequestration is a process of execution against the estate which is said to have been first issued by Lord Keeper Bacon, & was resorted to by reason of the infirmity of the process of contempt which is merely personal (*SWINFEN EADY, L.J.*).—*Re SUAREZ, SUAREZ v. SUAREZ*, [1918] 1 Ch. 176; 87 L. J. Ch. 173; 118 L. T. 279; 34 T. L. R. 127; 62 Sol. Jo. 158, C. A.

Annotation:—*Mentd. Re Jubilee Cotton Mills*, [1922] 1 Ch. 100.

600. Service of allocatur for costs.—The ct. will not grant a rule to dispense with personal service of the master's *allocatur* for costs, with a

view to an attachment, on an affidavit that deft. keeps out of the way to avoid being served.

I know of no instance of a similar application; & unless some authority is cited to support it I think we ought not to establish a precedent pregnant with such serious consequences (ABBOTT, C.J.).—ANON. (1819), 1 Ohit. 503.

Annotation:—*Refd.* Green v. Prosser (1833), 2 Dowl. 99.

601. — Letter admitting intention to evade.]—Where it is clear that the copy of the rule & *allocatur* have come to the hands of deft., an attorney, the ct. will grant a rule *nisi* for an attachment, although strict personal service has not been effected. Various attempts had been made to serve deft. & a demand made of the costs in the usual form at his office of his clerk. On the same day as the demand had been made a letter was received in the handwriting of the attorney in which he stated that he was purposely keeping out of the way on account of that & other matters; the letter at the same time acknowledged the receipt of the copy of the rule & *allocatur* indorsed:—*Held*: a rule *nisi* for an attachment would be granted.—PHILLIPS v. HUTCHINSON (1835), 3 Dowl. 583.

602. Evasion by attorney—Substituted service ordered—On clerk.]—HINTON v. DEAN, No. 592, *ante*.

603. — Service at office ordered.]—Under certain circumstances the ct. will grant a rule *nisi* for an attachment against an attorney for the non-payment of money, though no personal demand has been made upon him.

I do not wish to establish a new practice, & I have never heard of such a rule being granted before; but in a case such as this in which an attorney in the cause gets possession of money which he ought to refund, & keeps out of the way to avoid having a personal demand made upon him, I think that the rule as to a personal demand ought not to be rigidly enforced. In general no doubt there must be a personal service & demand before granting an attachment, but in such a case as this the service of the rule at the attorney's office is sufficient. You may have a rule *nisi* for an attachment to be served at the office (PATTERSON, J.).—JOHNSON v. DAY (1846), 8 L. T. O. S. 172.

604. —.]—ANON., No. 595, *ante*.

605. Order of Probate Division—Writ of sequestration.]—Costs & alimony, decreed in a matrimonial suit, not being paid by the husband, who had gone to reside beyond the sea, the ct. pronounced him in contempt, & decreed the same to be signified, in order to sequester under 2 & 3 Will. 4, c. 4, without personal service of the monition.—MORSE v. MORSE (1846), 5 Notes of Cases, 49.

606. — Without previous issue of writ of attachment.]—Resp. in a suit for restitution of conjugal rights was evading service of the decree, & an order as to custody of children. The ct., though she was not abroad, ordered a writ of sequestration to issue, without a previous writ of attachment or personal service of the decree or order.—ALLEN v. ALLEN (1885), 10 P. D. 187; 54 L. J. P. 77; 33 W. R. 826.

Annotations:—*Consd.* Hyde v. Hyde (1888), 13 P. D. 166; R. v. Wigand, *Re* Wigand (1913), 82 L. J. K. B. 735. *Refd.* *Re* Suarez, Suarez v. Suarez, [1918] 1 Ch. 176.

607. —.]—A husband having obtained a decree *nisi* for divorce, an order was made for the wife to give up his children to him. This order was not served upon her personally, but it appeared that she knew of the order & kept out of the way to avoid service. The children were

not delivered up, & the father could not discover where they were. A further order was thereupon made for a sequestration to issue against the estate of the wife:—*Held*: the sequestration was properly issued without personal service of the previous order.—HYDE v. HYDE (1888), 13 P. D. 166; 57 L. J. P. 89; 50 L. T. 529; 36 W. R. 708; 4 T. L. R. 586, C. A.

Annotations:—*Consd.* Kistler v. Tettmar, [1905] 1 K. B. 39; *Re* Tuck, Mureh v. Loosemore, [1906] 1 Ch. 692. *Refd.* Favard v. Favard (1896), 75 L. T. 664; *Re* Suarez, Suarez v. Suarez, [1918] 1 Ch. 176. *Menid.* Cox v. Bennett, [1891] 1 Ch. 617; Michell v. Michell, [1891] P. 208; Hood Barrs v. Cathcart, [1894] 2 Q. B. 559; Hood-Barrs v. Cathcart (No. 1) (1894), 38 Sol. Jo. 562; Pillers v. Edwards (1891), 71 L. T. 788; *Re* Lumley, *Ex p.* Hood Barrs, [1894] 3 Ch. 135; Bolitho v. Gidley, [1905] A. C. 98.

See, further, HUSBAND & WIFE.

(c) Undertakings.

608. General rule—Positive & negative undertakings distinguished.]—HALFORD v. HARDY, No. 530, *ante*.

609. —.]—D. v. A. & Co., No. 499, *ante*.

610. —.]—Where a party to an action has given in ct. an undertaking to do something on or before a certain day & does not carry out the undertaking, it is not necessary upon an application to have him committed to prison for contempt, to prove service upon him, either of a copy of the order containing the undertaking, or of the undertaking itself.—*Re* LAUNDER, LAUNDER v. RICHARDS (1908), 98 L. T. 554.

(d) Orders for Discovery, Inspection and Interrogatories.

See, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

See R. S. C., Ord. 31, rr. 21, 22, 23.

611. General rule.]—Where an order of a judge had been obtained for deft. to answer interrogatories pursuant to C. L. P. Act, 1851 (c. 125), s. 51, & he had obtained an extension of the time, but no answer had been given, the ct. granted a rule *nisi* for an attachment for contempt of ct. although there had been no personal service.—SEAFIELD (LORD) v. PRATT (1862), 5 L. T. 580; *subsequent proceedings*, 5 L. T. 674.

612. —.]—An order upon a party in a suit to answer interrogatories need not be personally served.—LITTLE v. ROBERTS (1874), 30 L. T. 367.

613. Service upon solicitor.]—Attachment for want of answer ordered upon evidence consisting of a memorandum of service of the interrogatories upon deft.'s solr. in the handwriting of the clerk by whom the service had been effected, & an affidavit by another clerk of pltf.'s solr. of the verbal admission of such service by deft.'s solr.—SIDE-BOTTOM v. ADKINS (1857), 27 L. J. Ch. 152; 30 L. T. O. S. 163; 4 Jur. N. S. 942; 6 W. R. 97.

614. —.]—Service of an order to answer interrogatories upon the solr. of a party is, under Ord. 31, r. 21, sufficient service to found an application for attachment.—*Re* MULCASTER, DALSTON v. NANSON (1878), 47 L. J. Ch. 609; 26 W. R. 434.

615. —.]—Leave to issue a writ of attachment for non-compliance with an order for production of documents for inspection was given on motion where the order & notice of motion had been served only on the solr. of the person to be attached.—JOY v. HADLEY (1883), 22 Ch. D. 571; 52 L. J. Ch. 471; 47 L. T. 615; 31 W. R. 519.

616. Consent to enlargement of rule.]—In a cause in the Ct. of C. P. at Lancaster, an order was granted by the district prothonotary to administer interrogatories to pltf. to be answered within ten days. The order with the interrogatories was served on pltf.'s attorneys, & an order for further

Sect. 5.—Evidence and procedure: Sub-sect. 3, B. (d), C. & D (a), (b) & (c); sub-sect. 4, A.]

time to answer obtained by them. The interrogatories not having been answered within the further time, a rule was obtained in the Ct. of Q. B. for an attachment against *pltf.* on the ground that *pltf.* had by not answering the interrogatories been guilty of a contempt under the C. L. P. Act, 1854 (c. 125), ss. 51 & 100, & that by force of 32 & 33 Vict. c. 37, ss. 6, 7, & 15, the proper mode of proceeding was by rule in any one of the superior cts. On cause being shown:—*Held*: the proceedings were regular, & the rule would be made absolute.—*COSTON v. BLACKBURN* (1872), L. R. 8 Q. B. 54.

Annotation:—Consd. Morgan v. Alexander (1875), L. R. 10 C. P. 184.

Whether indorsement on necessary.]—See Sub-sect. 4, C., *post*.

C. Substituted Service.

Sec. R. S. C., Ord. 67, r. 6, Ord. 9, r. 2, Ord. 10.

617. When ordered—Proof of evasion of service—Ineffectual efforts to serve.]—Upon an affidavit of ineffectual attempts to serve the *deft.*, & of ineffectual inquiries for him by application at his residence & to his *solr.*, & of other facts showing that *deft.* was keeping out of the way to avoid service, & on an affidavit of the witness's belief to the same effect, & of the inability of witness to serve *deft.* within the time limited by the order:—*Held*: substituted service of an order directing *deft.* to transfer a sum of money into *ct.* before a specified day would be ordered to be made on *deft.*'s *solr.* in the cause.—*SKEGG v. SIMPSON* (1848), 2 De G. & Sm. 454; 64 E. R. 203.

618. —.]—The order on a *solr.* for payment to his client of a sum found due on taxation, requires personal service, but it appearing that the *solr.* absented himself to avoid service, an order for substituted service was made.—*RE LLOYD* (1818), 10 Beav. 451; 50 E. R. 655.

619. — Respondent in communication with person within jurisdiction—Reasonable probability that order will come to his knowledge.]—*WHYTE-MELVILLE v. WHYTE-MELVILLE* (1888), 4 T. L. R. 491.

D. Sufficiency of Service.

(a) In General.

620. Service out of the jurisdiction.]—Where *deft.* had been served with the bill out of the jurisdiction of the *ct.* where he resided, but came from time to time to England, the *ct.* declined to issue an attachment against him for want of appearance.—*HACKWOOD v. LOCKERBY* (1855), 7 De G. M. & G. 238; 3 Eq. Rep. 562; 24 L. J. Ch. 408; 3 W. R. 440; 44 E. R. 94, L. J.

621. At house of respondent.]—*HOLGATE v. GRANTHAM* (1576), Cary, 58; 21 E. R. 31.

622. —.]—*BODNAM v. MORGAN* (1580), Cary, 101; 21 E. R. 54.

623. — Respondent refusing to accept service.]—An attachment was granted for non-payment of costs, in pursuance of the master's *allocatur*, where the service was regular, except that the party refused to take the copy of the rule & *allocatur*,

which was then put under the house door.—*ROSE v. KOOPS* (1835), 1 Har. & W. 213.

—.]—*See, also*, Nos. 593–595, *ante*.

624. On wife.]—Service on *deft.*'s wife ordered to be deemed personal service on *deft.*, & upon that service it was ordered that he stand committed for breach of injunction.—*PULTENEY v. SHELTON* (1799), 5 Ves. 147; 31 E. R. 516, L. C. *Annotations:—Mentd. Lathropp v. Marsh* (1800), 5 Ves. 259; *Jones v. Green* (1829), 3 Y. & J. 298.

625. On agent of firm—Authorised by partner.]—Service of a rule on the London agent of a country firm is good service, so as to found a motion for a contempt against a partner who allows it, but it is not sufficient as regards the other partner.—*RE HALLIDAY* (1841), 5 Jur. 532.

626. On governor of prison—Defendant in prison—Personal service forbidden.]—*Deft.* was imprisoned for a misdemeanour, & neither the deputy governor of the gaol nor the visiting magistrates would allow him to be seen. Service of a *subpoena* was made upon the deputy governor:—*Held*: this was good service.—*NEWENHAM v. PEMBERTON* (1845), 2 Coll. 54; 5 L. T. O. S. 36; 9 Jur. 637; 63 E. R. 631.

627. On servant—Promise to deliver to master.]—Leaving a copy of the order with the servant, who promised to deliver the copy of the order to his master, at the dwelling-house of the person sought to be served is a sufficient delivery to render the party liable to an attachment for disobedience of the order thus served.—*PYCROFT v. WILLIAMS* (1857), 28 L. T. O. S. 354; 5 W. R. 464.

628. On one of two co-executors—Order against both—"After service of this order."]—An order was made against two co-exors. that they should within four days after service of this order lodge in *ct.* a sum of money appearing to be due from them. The order was duly served upon one of them, but not upon the other, his address being undiscoverable. The order was disobeyed. On a motion for the issue of a writ of attachment against the exor. who had received service of the order:—*Held*: it was not necessary to have previously served the order on the absent exor., & the words "after service" in the order meant "after service upon the person against whom it was sought to enforce the order."—*RE ELLIS, HARDCASTLE v. ELLIS* (1906), 95 L. T. 80; 51 W. R. 526; 50 Sol. Jo. 560.

629. On corporation—Service on solicitor.]—A motion to sequester, which is the only remedy against a co. which disobeys a prohibitive order of the *ct.* will not be invalidated by reason of the order disobeyed not having been personally served upon the co. although duly served upon the *sols.* of the co.—*ABERDONIA CARS, LTD. v. BROWN, HUGHES & STRACHAN, LTD.* (1915), 59 Sol. Jo. 598.

630. Service prevented by violence.]—A person behaved in so violent a way as to prevent a formal service of a rule & *allocatur* for payment of costs, he being aware of the intention to do so:—*Held*: there was sufficient service to warrant an attachment.—*WENHAM v. DOWNS* (1835), 1 Har. & W. 216.

631. As to time for service—Expiry of time for compliance.]—An order was made on a person not a party to the cause, for payment of a sum of

PART VI. SECT. 5, SUB-SECT. 3.—D. (a).

624 i. On wife—At dwelling-house.]—Where *pltf.* being unable to serve *deft.* personally, served the order on his wife at his dwelling-house, no attachment will lie for breach of the injunction unless there be an order for substituted service.—*WHITNEY v. GILES*

(1833), 1 Ir. L. Rec. N. S. 130. IR.

627 i. On servant—Copy of order left with servant maid.]—"Leaving a copy of the order with the servant maid" is not good service.—*MONAGHAN v. KIRWAN* (1838), 1 Craw. & D. Abr. C. 208.—IR.

631 i. As to time for service—Expiry of time for compliance.]—Where an

order limits a time to do an act, the order must be served before the time limited has expired, otherwise the party required to do the act will not be committed.—*WAGNER v. MASON* (1874), 6 P. R. 187.—CAN.

631 ii. — Reasonable time for compliance must be given.]—Where the judgment directs the act to be done

money within three weeks from the date of the order, but it was not served until after the expiration of that time:—*Held*: this was irregular, & the subsequent proceedings for a commitment would be set aside.—*DUFFIELD v. ELWES* (1840), 2 Beav. 268; 48 E. R. 1183.

632. — Service immediately before application.—It is no ground of objection to an application for a rule absolute in the first instance for an attachment for non-payment of costs, on the master's *allocatur*, that the rule ordering the payment of the costs & the *allocatur* thereon have only been served upon the party on the day when, & immediately before, such application is made.—*STIEBEL v. COMPTON* (1844), 9 Jur. 181.

633. Objection to sufficiency of service—Mere denial insufficient.—The ct. will not open the rule for an attachment on the mere affidavit of the party, that he has not been served, at least unless he show some mistake in the service.—*HOPLEY v. GRANGER* (1805), 1 Bos. & P. N. R. 256; 127 E. R. 459.

634. — On motion for attachment.—(1) It is competent to a party to object, on a motion for attachment for non-compliance with an order of the ct., to the sufficiency of the service of the order on him.

(2) Service of an order for the payment of alimony is effected by showing to the party to be served an office copy of the order, & by leaving with him a copy of it.—*PARR v. PARR & WHITE* (1863), 4 Sw. & Tr. 229; 32 L. J. P. M. & A. 91; 11 W. R. 550; 161 E. R. 1504.

635. — Must not be made after issue of attachment—Service on co-respondent in wrong name.—In a suit for dissolution of marriage, after a decree *nisi* with costs against co-resp. an attachment for non-payment of those costs was granted. The citation & subsequent proceedings, in which the co-resp. was erroneously styled W. A., were served upon W. B. A., who took no objection to the irregularity until the attachment was granted. He then applied to have it set aside:—*Held*: as he had stood by during the progress of the suit & allowed judgment to go against him in a wrong name, the attachment must stand.—*CHURCHILL v. CHURCHILL* (1868), L. R. 1 P. & D. 485; 37 L. J. P. & M. 41; 17 L. T. 619.

Notice by telegram.—See Nos. 586, 587, *ante*.

Necessity to state service & production of orders—In affidavits in support of notice of motion to commit.—See Sub-sect. 7, E. (b), *post*.

(b) *Service of Copies without showing Original Order.*

636. General rule.—*WOODWARD v. LINCOLN* (EARL), No. 465, *ante*.

637. ——In order to obtain an attachment against the sheriff for not returning a writ pursuant to a judge's order, the original order must be shown at the time of serving a copy of it.—*GRANGER v. FRY* (1836), 5 Dowl. 21.

638. — Original order filed in registry—Delivery out for service.—(1) Service of an order for payment of costs is effected by leaving an office copy of the order with the party chargeable, & at the same time producing the original order. Unless

within a limited time deft. can not be attached unless the judgment has been served in time to give him a reasonable opportunity of complying with its terms before expiration of the prescribed period.—*BERRY v. DONOVAN* (1893), 21 A. R. 14.—CAN.

PART VI. SECT. 5, SUB-SECT. 3.—D. (b).

636 i. General rule.—Service of a

copy of the order of the ct. which has been disobeyed is a sufficient service for the purpose of showing a party is in contempt.—*BURNETT v. BURNETT & TAYLOR* (1903), 3 S. R., N. S. W. 513.—AUS.

636 ii. ——If the original order is not shown at the time of service of a copy, the person served cannot be brought into contempt for disobedience to it.—*BLAKELEY v. BLAASE* (1888), 12 P. R. 565.—CAN.

the original be produced, the attachment for non-payment of costs will not be granted.

(2) Where service cannot be effected in consequence of the original order being filed in the registry, the ct. will, upon motion, direct that it be delivered out that it may be served.—*DAVIES v. DAVIES & DALBY* (1862), 2 Sw. & Tr. 437; 31 L. J. P. M. & A. 104; 6 L. T. 163; 10 W. R. 147; 164 E. R. 1065.

Annotation.—As to (1) *Consd. Parr v. Parr & White* (1860), 4 Sw. & Tr. 229.

639. — Order for alimony.—*PARR v. PARR & WHITE*, No. 634, *ante*.

640. — Knowledge of contents of original order.—*PRITTIT v. BELL* (1908), 52 Sol. Jo. 784.

641. Necessity for service of copy—Although original order shown.—To ground a motion for a contempt in disobeying a rule of ct. it is not sufficient to show the party the original rule, without personal service of a copy of such rule.—*PARKER v. BURGESS* (1834), 3 Nev. & M. K. B. 36.

Necessity to state service & production of orders—In affidavits in support of notice of motion.—See Sub-sect. 7, E. (b), *post*.

(c) *Service of Erroneous Copies.*

642. Effect of—Error as to date of original.—If an order be made for a party to do a certain thing, & a copy be served upon him, in which copy there is an error as to the date of the original, he is not bound to obey it; & therefore, if committed for disobeying the order, is entitled to his discharge.—*BRANDON v. BRANDON* (1831), 1 L. J. Ch. 46, L. C.; *subsequent proceedings* (1832), 1 L. J. Ch. 172, L. C.

643. ——If the copy of the taxing-master's certificate which is served be not a true copy, however slight the error, the attachment founded thereon will be discharged with costs.—*Re REYNOLDS* (1862), 10 W. R. 709.

644. — Error in title of order.—An order that a father should deliver over his infant daughter to her mother was intitled in the matter of the infant, naming her, & in the matter of Custody of Infants Act, 1873 (c. 12). The copy delivered to the father on serving him with the order was intitled only in the matter of the Act, & not in the matter of the infant, but it was indorsed on the outside "*Re Holt*." The order was not obeyed, & an order was then made to attach the father, & he was arrested & lodged in prison:—*Held*: the service of the first order was ineffectual, & the order to attach must be discharged as irregular.—*Re HOLT* (1879), 11 Ch. D. 168; 40 L. T. 207; 27 W. R. 485, L. J.

Annotations.—*Consd. Re Johnson, Ex p. Johnson* (1883), 25 Ch. D. 112. *Distd. Ward v. Law Soc.* (1921), 65 Sol. Jo. 791. *Refd. United Telephone Co. v. Dale* (1884), 25 Ch. D. 778.

SUB-SECT. 4.—DEMAND FOR COMPLIANCE WITH ORDER—INDORSEMENT.

A. In General.

See, now, R. S. C., Ord. 41, r. 5.

645. Order to execute deed—Deed must be tendered.—I think it is quite clear that you cannot

PART VI. SECT. 5, SUB-SECT. 3.—D. (c).

642 i. Effect of.—If it appear that there is an error or omission in the copy of the order served, deft. will not be committed for disobeying the order.—*LINDSAY v. LINDSAY* (1877), 13 C. L. J. N. S. 197.—CAN.

PART VI. SECT. 5, SUB-SECT. 4.—A. e. Order to deliver possession—Demand necessary.—In moving to

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have an attachment for not executing a deed without tendering it (WIGHTMAN, J.).—*Re ANDREWES & ANDREWES* (1845), 5 L. T. O. S. 202.

646. ———.]—Leave will not be given to issue a writ of attachment against a person who refuses to execute a settlement which he has been ordered to do under the Marriage Act, 1823 (c. 76), ss. 19 & 23, until the settlement has been tendered to him personally for execution, after service of the decree, & he has refused to execute it.—*A.-G. v. WARING* (1880), 28 W. R. 623.

647. ——— **Express demand necessary.**—To sustain an attachment for disobedience of a rule of ct. requiring the party to execute a conveyance, it is not enough merely to serve him with a copy & to show him the original rule, there must be an express demand upon him to do the act which the rule commands him to do.—*SWINFEN v. SWINFEN* (1856), 18 C. B. 485; 25 L. J. C. P. 303; 27 L. T. O. S. 220; 139 E. R. 1459; *subsequent proceedings*, (1857), 1 C. B. N. S. 361.

*Annotations:—**Reid. Thomas v. Rawlings* (1859), 28 L. J. Ex. 347; *Mentd. Harding v. Chowne* (1863), 1 New Rep. 284; *Prestwich v. Poley* (1865), 18 C. B. N. S. 806; *Strauss v. Francis* (1866), L. R. 1 Q. B. 379.

Indorsement on order.—*See* Sub-sect. 4, C, *post*. As to demand for compliance with award of arbitrator, *see* ARBITRATION, Vol. II., pp. 579, 580, Nos. 2107–2128.

Statement of demand in affidavit.—In support of notice of motion to attach or commit.]—*See* Sub-sect. 7, E. (c), *post*.

B. Sufficiency of Demand.

See, now, R. S. C., Ord. 41, r. 5.

Demand for compliance with award of arbitrators.—*See*, ARBITRATION, Vol. II., pp. 579, 580, Nos. 2107–2128.

648. Must be specific.—An attachment was granted for non-payment of the costs of an ejectment which had been taxed under the consent rule, where the rule & *allocatur* were served on deft., & a demand of the costs generally, without mentioning any specific sum, was made at the same time.—*DOE d. TEW v. BILLINGHAM* (1816), 3 Dow. & L. 769; 15 L. J. Q. B. 220.

649. ———.]—Motion for an attachment against a firm of attorneys for disobedience to a judge's order which had been made a rule of ct., & which called upon them to deliver to P. their bill of costs, & to hand over all books, papers, etc., & to pay the balance which should be found to be due. No sufficient demand of the balance was made out:—*Held*: the rule would be refused.—*Ex p. POTTS* (1847), 9 L. T. O. S. 104.

650. Whether personal demand necessary.—At time of service of order.]—*DODINGTON v. HUDSON*, No. 436, *ante*.

651. ———.]—*STUNNELL v. TOWER*, No. 557, *ante*.

652. ———.]—A judge ordered that on payment of a sum of money to pltf's. or their attorney, certain title deeds should be given up to deft., & the money was tendered to the attorney, but the deeds were not given up:—*Held*: the ct. would refuse an attachment against pltf's. because notice had not been given to them of the tender, & the deeds had not been demanded of them personally.—*EVANS v. MILLARD* (1835), 3 Dowl. 661; 1 Gale, 138; 4 L. J. Ex. 156.

653. ——— **Where respondent evading service.**—*JOHNSON v. DAY*, No. 603, *ante*.

654. ——— **Where time specified for obedience.]**

—When an order for payment of a sum of money within a specified time is made, & personally served, a personal demand for payment is unnecessary to found a motion for attachment for disobedience to the order.—*NICHOLLS v. NICHOLLS* (1862), 2 Sw. & Tr. 637; 31 L. J. P. M. & A. 115; 7 L. T. 221; 164 E. R. 1145.

655. Demand by clerk.—Attachment for contempt in not paying money, pursuant to the master's *allocatur*, cannot be supported on an affidavit stating a demand of the money by a clerk.—*HARTLEY v. BARLOW* (1819), 1 Chit. 229. *Annotation:—**Consd. Dennett v. Pass* (1835), 1 Bing. N. C. 638.

656. ——— **To solicitor.**—A rule directed an attorney to deliver up a bond to pltf. his attorney, or agent, & a demand of the bond was made by a clerk to pltf.'s attorney:—*Held*: there had been no sufficient demand & the attorney had not been guilty of contempt in not delivering up the bond.—*Ex p. FORTESCUE* (1834), 2 Dowl. 448.

*Annotation:—**Consd. Dennett v. Pass* (1835), 3 Dowl. 632.

657. ———.]—By a judge's order, made a rule of ct., A., the former attorney of B., was directed within ten days to deliver to C. & D., B.'s present attorneys, a bill of costs, etc.:—*Held*: an attachment could not issue against A. for disobedience of the rule of ct. upon a mere demand by a clerk of C. & D.—*Re CATTLIN* (1849), 7 C. B. 136; 6 Dow. & L. 566; 137 E. R. 56; *sub nom. Re C—, Ex p. BRIGGS*, 18 L. J. C. P. 184; *sub nom. Re CATTIN, Ex p. BRIGGS*, 13 Jur. 471.

658. Demand by agent of plaintiff.—*DODINGTON v. HUDSON*, No. 436, *ante*.

659. Demand by country solicitor.—*London agent on record.*—Costs were ordered to be paid to defts. or their attorney:—*Held*: a demand by their attorney in the country was sufficient to authorise an application for an attachment to enforce payment, notwithstanding the London agent of the attorney in the country was the attorney on record.—*DENNETT v. PASS* (1835), 1 Bing. N. C. 638; 3 Dowl. 632; 1 Hodg. 157; 1 Scott 586; 4 L. J. C. P. 218; 131 E. R. 1263.

660. Demand by solicitor.—*Without power of attorney.*—Motion for attachment for non-payment of costs that had been ordered to be paid to the party on an affidavit of a demand made by his attorney:—*Held*: the motion must be refused since the demand must be made by the party or else there must be a power of attorney.—*DOE d. CHIPPEN v. ROE* (1835), 1 Scott, 588, n.

*Annotation:—**Consd. Mason v. Whitehouse* (1838), 7 L. J. C. P. 295.

661. ——— **Though order for payment of costs not directed to him.**—A demand of the costs in the cause by pltf.'s attorney is sufficient to obtain an attachment, although the master's *allocatur* does not direct them to be paid to him.—*COX v. SALMON* (1830), 2 M. & W. 127; 2 Gale, 226; 6 L. J. Ex. 23; 150 E. R. 698.

*Annotation:—**Folld. Mason v. Whitehouse* (1838), 6 Scott, 575.

662. ———.]—A trial was postponed by reason of the absence of a material witness on payment of the costs of the day by defts. "to pltf.":—*Held*: a demand of such costs by pltf.'s attorney in the cause was sufficient whereon to ground an attachment for their non-payment.—*INMAN v. HILL* (1838), 4 M. & W. 7; 6 Dowl. 666; 7 L. J. Ex. 201; 2 Jur. 470; 150 E. R. 1320.

*Annotation:—**Reid. Mason v. Whitehouse* (1838), 4 Bing. N. C. 692.

commit for a contempt in not delivering possession of mortgaged premises, in obedience to an order, it must be shown that possession was demanded.—*NEVIEUX v. LABADIE* (1858), 1 Ch. Ch. 13.—*CAN.*

663. ———.]—Where the attorney in the cause is entitled to costs when received, an attachment for non-payment thereof, pursuant to the master's *allocatur*, will be granted on a demand by him, without a letter of attorney, although the *allocatur* directs the costs to be paid to the party, omitting the words "or his attorney."—*MASON v. WHITEHOUSE* (1838), 4 Bing. N. C. 692; 6 Dowl. 602; 1 Arn. 201; 6 Scott, 246, 575; 7 L. J. C. P. 295; 2 Jur. 545; 132 E. R. 955.

664. Demand by wife & solicitor—Payment of alimony—Payee not named in order.]—An attachment for non-payment of alimony was granted, although the order did not state to whom payment was to be made, where it appeared that the wife & her solr. had at the same time demanded payment of the husband & he had paid neither.—*LADMORE v. LADMORE* (1863), 32 L. J. P. M. & A. 157.

665. Demand by third person—Under authority of attorney.]—An attachment for non-payment of costs cannot be supported by a demand of the costs by a third person, authorised by the attorney to receive them.—*CLARK v. DIGNUM* (1838), 3 M. & W. 319; 1 Horn. & H. 80; 7 L. J. Ex. 64; 2 Jur. 67; 150 E. R. 1166.

666. Demand by duly authorised person.]—The ct. will not grant an attachment for non-performance of a rule which calls on a party to deliver up papers & pay costs, unless it appears on the affidavits on which the rule is moved, that the demand was made either by the party entitled, or by some one authorised by him under power of attorney.—*DOE d. HICKMAN v. HICKMAN* (1840), 1 Man. & G. 566; 8 Dowl. 833; 1 Scott, N. R. 398; 4 Jur. 746; 133 E. R. 457.

Annotation:—Consd. Re Catlin (1849), 7 C. B. 136.

667. — Showing receipt signed by person to whom money payable.]—The ct. made an order for the payment of the wife's costs to her proctor in a suit for judicial separation. A demand for payment of these costs was personally made on resp. by a person on behalf of petitioner's proctor, a receipt for the costs, signed by the proctor, being at the same time shown to resp.:—*Held*: such demand for payment was sufficient to found an order for attachment.—*THOMAS v. THOMAS* (1860), 2 Sw. & Tr. 64; 2 L. T. 390; 8 W. R. 476; 164 E. R. 915.

668. Demand under power of attorney—Copy of power must be served—With original order.]—In order to obtain an attachment, it is not sufficient that all the necessary steps are taken, partly at one time & partly at another.

Motion for an attachment for non-performance of an award & non-payment of costs pursuant to the master's *allocatur*. The demand was not made by the person to whom the sum due on the award was payable, but a power of attorney was given by him to A., who now made an affidavit, A. had formerly served deft. with a copy of the award & *allocatur*, showing him, at the same time, the originals of these documents, but had not shown him the power of attorney. Subsequently he showed deft. the power of attorney, but not the other documents:—*Held*: the rule would be refused since all necessary materials for making the demand were not in the hands of A. at the time he made it.—*ROGERS v. TWISDEL* (1835), 3 Dowl. 572.

669. ———.]—Where a demand of money is made pursuant to a rule of ct. & the

master's *allocatur*, under a power of attorney, a copy of the power of attorney must be left, in order to bring the party into contempt for non-payment.—*DOE d. COPE v. JOHNSON* (1839), 1 Will. Woll. & H. 519.

670. ———.]—To bring a party into contempt for not paying the amount of taxed costs, pursuant to the master's *allocatur*, where payment is demanded under a power of attorney, it is necessary to leave a copy of the power of attorney at the time of the demand.—*PRICE v. DUGGAN* (1842), 4 Man. & G. 225; 1 Dowl. N. S. 709; 4 Scott, N. R. 734; 134 E. R. 93.
Annotation:—Consd. Newton v. L. B. & S. C. Ry. (1849), 19 L. J. Q. B. 12.

671. — Order to pay to attorney—Power executed by client.]—A rule of ct. ordered an attorney to deliver a signed bill of costs to the present attornies of his client:—*Held*: an attachment could not be granted for disobedience to the rule on a demand made under a power of attorney executed by a client.—*Ex p. SMITH* (1837), Will. Woll. & Dav. 588.

672. — Order to pay to high sheriff—Power executed by under-sheriff—After high sheriff out of office.]—A demand of costs which by the rule are payable to a high sheriff, made under the authority of a power of attorney executed by the under-sheriff after the high sheriff has gone out of office is sufficient to support an attachment.—*R. v. MATTEY* (1838), 6 Dowl. 515; 1 Will. Woll. & H. 176; 2 Jur. 842.

673. Demand by bailiff—Second demand without service of order.]—On a motion for an attachment for non-payment of costs, it appeared that the service of the copy of the rule of ct. & the demand of costs, had been made by a bailiff instead of the attorney, & the attorney had afterwards made a demand of the costs, but had not served a copy of the rule of ct.:—*Held*: insufficient to obtain the attachment.—*DOE d. STURGES v. WAUP* (1843), 2 Dowl. N. S. 706; 12 L. J. Q. B. 139; 7 Jur. 442.

C. Indorsement on Order.

674. Scope of R. S. C., Ord. 41, r. 5.]—(1) R. S. C., Ord. 41, r. 5, which requires every order to bear an indorsement warning the party bound by it of the consequences of disobedience, is not confined to cases where personal service is required, but applies to an order for discovery of documents of which service on the solr. is permitted, & a writ of attachment cannot be issued against a person who disobeys such an order unless the copy served on his solr. bore the required indorsement.

A party whose solr. was served with such an order without the required indorsement took out a summons for further time:—*Held*: he did not thereby waive the irregularity of the service.

(2) The affidavit in support of a motion for attachment was not served with the notice of motion as it ought to have been under R. S. C., Ord. 52, r. 4, but was served two days clear before the day named in the notice of motion for moving the ct.:—*Held*: this was not such an irregularity as made the notice invalid.—*HAMPDEN v. WALLIS* (1884), 26 Ch. D. 746; 51 L. J. Ch. 83; 50 L. T. 515; 32 W. R. 808, C. A.

Annotations:—Consd. Pett v. Daniel (1886), 34 Ch. D. 172. *Fidd. Re Cunningham* (1886), 55 L. T. 766. *Reid. Re Tuck, Murch v. Loosmore* (1900), 75 L. J. Ch. 497. *Mentl.*

PART VI. SECT. 5, SUB-SECT. 4.—B.

6681. Demand under power of attorney—Authority must be stated or produced

if required.—In demanding costs under power of attorney, in order to ground a motion for an attachment for refusal to pay, the person making the demand

must state his authority, or offer to produce it, & produce it if required.—*ANON.* (1832), *Glascock* 221.—*IR.*

Sect. 5.—Evidence and procedure: Sub-sect. 4, C.; sub-sect. 5, A., B. & C.]

Re Wigreston Hospital (Chaplain) & Stephenson (1885), 54 L. J. Q. B. 248; Taylor Plinston v. Plinston (1911), 105 L. T. 615.

675. —[—]*Re TUCK, MURCH v. LOOSEMORE*, No. 534, *ante*.

676. Form of indorsement—Consequences of disobedience inaccurately stated.—[An attachment which had been issued under Ord. 12 of Aug. 1841, for non-compliance with an order to transfer stock into ct. was discharged, with costs, the service of the order having stated, in the old form, that in default, deft. would be liable to a serjeant-at-arms & a sequestration.—*HINDE v. BLAKE* (1842), 5 Beav. 431; 12 L. J. Ch. 56; 49 E. R. 645.

Annotation:—Refd. Pace v. Pace (1891), 67 L. T. 383.

677. — **Need not follow exact words of R. S. C., Ord. 41, r. 5.**—[An order made on Feb. 28, 1884, directed deft. to pay a sum into ct. by Mar. 13. This order was not served before Mar. 13, & an order was made on Apr. 3 enlarging the time until four days after service of the two orders. Pltf. served the two orders, putting no indorsement on the latter. The money not having been paid in, pltf. moved for an attachment "For your default in obeying the orders made herein on Feb. 28 last & Apr. 3 last":—*Held*: (1) as the second order only extended the time for doing the act mentioned in the first order, it was sufficient to indorse the first order only; (2) the indorsement on the order of Feb. 28 was sufficient in form, although not in the words given in R. S. C., Ord. 41, r. 5, but in the form given in Ct. of Ch. Ord. of Jan. 7, 1870, r. 1; (3) the notice of motion, which was to attach "for default in obeying" the orders, sufficiently stated the grounds of the application within the meaning of R. S. C., Ord. 52, r. 4; (4) as the affidavit in support of the application stated that deft. had not borrowed the order for the purpose of paying in the money, or given notice of having paid the money in, although the affidavit would probably have been held insufficient to support an attachment if the motion had been heard on affidavit of service, the defect was cured by deft.'s appearing & resisting the application on other grounds.—*TREHERNE v. DALE* (1884), 27 Ch. D. 66; 51 L. T. 553; 33 W. R. 97, C. A.

Annotations:—As to (3) Distd. Hipkies v. Fellows (1909), 101 L. T. 701. Refd. Brammell v. Mutual Industrial Corpn. (1915), 84 L. J. Ch. 474.

678. Whether necessary—On order enlarging time for compliance—Indorsement on first order sufficient.—[*TREHERNE v. DALE*, No. 677, *ante*.

679. — **On order for discovery of documents.**—[*HAMPDEN v. WALLIS*, No. 674, *ante*.

680. — **On prohibitory order.**—[The ct. had granted an injunction restraining defts. from polluting with sewage a pool belonging to pltf., but suspended the order for three months to allow them to comply with it. They had moved the ct. for a further extension of time, but had been refused. As they had taken no steps to obey the order, pltf., soon after the expiration of the three months, served them with notice of motion under R. S. C., Ord. 42, r. 31, for leave to issue sequestration against the property of the corpn. Before, however, this notice was served they remedied the nuisance, so the motion now came on merely as a question of costs. Defts. submitted that (a) no memorandum had been indorsed upon the copy of the judgment served on them, as required by R. S. C., Ord. 41, r. 5; (b) there was no case for sequestration at all, but if there were pltf. was entitled to issue, & ought to have issued, his writ under R. S. C., Ord. 43, r. 6, without moving for

leave; (c) no copies of the affidavits intended to be used had been served with the notice of motion as required by R. S. C., Ord. 52, r. 4.—*Held*: (1) deft. had been guilty of wilful disobedience to the order of the ct.; (2) R. S. C., Ord. 41, r. 5, had no application to a prohibitive order like the present one; (3) R. S. C., Ord. 43, r. 6, applied to something to be done in a limited time, & not to something which had been ordered, as in the present case, not to be done at all; (4) copies of affidavits need only be served with the notice of motion in cases where the liberty of the subject was involved, as in attachment.—*SELOUS v. CROYDON RURAL SANITARY AUTHORITY* (1885), 53 L. T. 209.
Annotation:—As to (2) Fold. Hudson v. Walker (1894), 64 L. J. Ch. 204.

681. — [—]*—*—[The special memorandum which, under R. S. C., Ord. 41, r. 5, is to be indorsed on the copy of a judgment or order served upon a person required to obey the same, is not necessary in the case of a merely prohibitive order.—*HUDSON v. WALKER* (1891), 61 L. J. Ch. 204; 39 Sol. Jo. 28; 13 R. 355.

682. — [—]*—*—[*Re TUCK, MURCH v. LOOSEMORE*, No. 534, *ante*.

683. — **Default in attendance.**—[An order for attachment of deft. was made by a district registrar in respect of default in attendance on a future appointment. It also appeared that there was no tender of conduct money in respect of her expenses, & that the order was not properly indorsed under R. S. C., Ord. 41, r. 5:—*Held*: any one of these points was fatal to the validity of the order for attachment.—*SHURROCK v. LILLIE* (1888), 52 J. P. 263; 1 T. L. R. 355.

684. — **On order of Probate Division.**—[A preliminary objection was taken as to non-indorsement of the order upon which the motion was founded, in a case where it was sought to attach an exor. for non-obedience to that order, which directed him to take probate within a certain time:—*Held*: the objection would be upheld.—*In the Goods of BUSTROW* (1891), 66 L. T. 60.

685. — [—]*—*—[By virtue of Matrimonial Causes Act, 1857 (c. 85), s. 52, all decrees & orders of the Ct. of Divorce are to be enforced in the same manner as orders, etc., in Ch. Therefore, in spite of R. S. C., Ord. 68, r. 1, which exempts divorce proceedings from the operation of the Rules & Ords. of the Supreme Ct., before a motion can be successfully made for disobedience to an order made in a divorce proceeding, it must be shown that the order it is sought to enforce was indorsed as required by R. S. C., Ord. 41, r. 5.—*PAGE v. PAGE* (1891), 61 L. J. P. 114; 67 L. T. 383.

686. — [—]*—*—[*TOWNEND v. TOWNEND*, No. 533, *ante*.

687. Order served without indorsement—Leave to serve with proper indorsement granted—Motion for four-day order refused.—[Where an order obtained by a client that a solr. should deliver his bill of costs had been served on the solr. without the indorsement required by Cons. Ord. 23, r. 10 to be made on every decree or order, & the solr. did not deliver his bill, & a motion was then made by the client for the usual four-day order:—*Held*: the motion was irregular, but the ct. would give the client leave to serve the first order again with the proper indorsement.—*Re BOWEN* (1863), 9 Jur. N. S. 612; 11 W. R. 607.

Annotation:—Fold. Pace v. Pace (1891), 67 L. T. 383.

688. Order served without indorsement—Reservice after date for compliance.—[(1) An attachment may be issued for disobeying an order to do an act within a specified time after notice of the order, although the person served has received

actual notice of it by means of an informal service, & the specified time after receiving that actual notice has already elapsed before the order is regularly served.

An order to deliver a bill of costs within 14 days after notice, was served on June 30, without the indorsement as to liability to attachment. It was again served, properly indorsed, on July 19 :—*Held* : an attachment might issue for disobedience to it.

(2) The rule against swearing an affidavit before the solr. conducting proceedings, or his clerk, does not necessarily extend to his agent employed to get the affidavit sworn.—*Re GREGG, Re PRANCE* (1869), L. R. 9 Eq. 137; 39 L. J. Ch. 107; 23 L. T. 234; 34 J. P. 276; *sub nom. Re PRANCE, Ex p. GREGG*, 18 W. R. 589.

Annotation :—*As to* (2) *Reid*. *Northumberland v. Todd* (1878), 26 W. R. 350.

689. — Summons for further time taken out by defendant.—Irregularity not waived by.]—*HAMPDEN v. WALLIS*, No. 674, *ante*.

Statement of indorsement in affidavit—In support of notice of motion.]—*See* Sub-sect. 7, E. (c), *post*.

SUB-SECT. 5.—THE APPLICATION FOR ATTACHMENT OR COMMITTAL.

A. By Whom made.

690. Application by counsel—Not in person.]—An attachment for misconduct cannot be moved for by a complainant in person, but the motion must be made by a barrister.—*Ex p. FENN* (1831), 2 Dowl. 527.

Annotation :—*Folld. Ex p. Liebrand*, [1914] W. N. 310.

691. — — — — —.]—*Ex p. LIEBRAND*, [1914] W. N. 310.

Respondent wife in divorce suit—Making counter-charges & claiming relief.]—*See* HUSBAND & WIFE.

B. How made.

See R. S. C., Ord. 44, r. 2.

Notice of motion, *see* Sub-sect. 6, *post*.

692. General rule.]—*WEST HAM CORPN. v. CUNNINGHAM & KING* (1906), 50 Sol. Jo. 696.

PART VI. SECT. 5, SUB-SECT. 5.—A.

1. Court may act ex mero motu.]—The ct. may of its own motion bring before it & punish persons guilty of contempt.—*Re "THE EVENING NEWS" NEWSPAPER* (1880), 1 N. S. W. L. R. 211.—*AUS.*

g. — — — — —.]—*Re ECHO & SYDNEY MORNING HERALD NEWSPAPER* (1883), 4 N. S. W. L. R. 237.—*AUS.*

h. — — — — —.]—*Re MOTT LAL GHOSE* (1917), L. R. 45 Calc. 109.—*IND.*

k. Not necessarily by A.-G. or other Crown law officer.]—An attachment for contempt of ct. need not be applied for by the A.-G. or other Crown law officer.—*R. v. ELLIS, Ex p. BAIRD* (1889), 28 N. B. L. 497.—*CAN.*

l. Party to suit.]—A party to a suit has status to move to commit a stranger thereto for contempt.—*STODDART v. PRENTICE* (1898), 6 B. C. R. 308.—*CAN.*

m. Any person.]—Any person may bring to the notice of the ct. any alleged contempt.—*STODDART v. PRENTICE* (1898), 6 B. C. R. 308.—*CAN.*

n. — — — — —.]—*Whether interested or not.]*—A contempt of ct. in a matter relating to a criminal proceeding may be brought before the ct. by any person, whether personally interested or not.—*R. v. HENNINGHAM, Mac. 712.*—*N.Z.*

PART VI. SECT. 5, SUB-SECT. 5.—B.

o. Whether in court or chambers—

693. Summons or motion—Chancery Division.]—*Re KNIGHT, KNIGHT v. GARDINER*, [1883] W. N. 162.

694. — — — — —.]—An application in the Ch. Div. for leave to issue a writ of attachment is not properly made by summons in chambers, but should be made in open ct. by motion.—*DAVIS v. GALMOYE* (1888), 39 Ch. D. 322; 60 L. T. 130; 37 W. R. 227; *sub nom. Re DAVIS, DAVIS v. GALMOYE*, 58 L. J. Ch. 120, C. A.

Annotations :—*Expld.* *Davis v. Galmoys* (1889), 40 Ch. D. 355. *Mentd. Re B—*, [1892] 1 Ch. 459; *Re Evans, Evans v. Norton* (1892), 41 W. R. 230.

695. — — — — —.]—**Actual attachment directed by judge in court.]**—An application for leave to issue a writ of attachment may be made by summons in chambers, but an actual attachment can only be directed by the judge personally in ct.—*DAVIS v. GALMOYE* (1889), 40 Ch. D. 355; *sub nom. Re DAVIS, DAVIS v. GALMOYE*, 58 L. J. Ch. 338; 37 W. R. 399.

696. — — — — —.]—**King's Bench Division.]**—*Held* : (*DAY, J. diss.*) a judge at chambers has, since Jud. Act, 1873 (c. 66), power to order a writ of attachment to be issued against a person who is in contempt by reason of disobedience to a judge's order, provided only that the application for such writ is made after due notice to the party against whom it is made, pursuant to Ord. 44, r. 2.—*SALM KYRBURG v. POSNANSKI* (1884), 13 Q. B. D. 218; 53 L. J. Q. B. 428; 32 W. R. 752, D. C.; *affd.*, 53 L. J. Q. B. 430, C. A.

Annotation :—*Mentd.* *Amstell v. Lesser* (1885), 16 Q. B. D. 187.

Jurisdiction to punish, *see* Part III., *ante*.

C. Time for.

697. Must be made promptly—Lapse of considerable time.]—Contempt by breach of an injunction by deft., present in ct. during the motion, though retiring before the order pronounced :—*Held* : a motion to commit, after a considerable lapse of time, & the order not having been drawn up, would be refused with costs.—*JAMES v. DOWNES* (1812), 18 Ves. 522; 34 E. R. 415, L. C. *Annotations* :—*Consd.* *United Telephone Co. v. Dale* (1884), 25 Ch. D. 778. *Mentd.* *Wood v. Beadell* (1829), 3 Sim. 273; *Zulueta v. Vincent* (1851), 14 Beav. 209, 216.

1885, & Jan. 20, 1886. The motion for attachment was not made until Mar. 27, 1886 :—*Held* : notwithstanding the lapse of time, the rule should be made absolute with costs. The main object of the application was to prevent further publications of a similar character, & not to punish for the past offence; otherwise the ct. would have hesitated to grant the rule.—*R. v. WOODWORTH* (1886), 7 R. & G. 186.—*CAN.*

697 iii. — — — — —.]—Where in a motion to attach for contempt of ct., the contempt consisting of libels in respect of matters in dispute in a pending action, appct. had for some time neglected to make the application, subsequent attacks on the part of resp. will justify appct. in moving with regard to the original offence, & it does not lie with resp. to plead delay as against appct.—*HASTINGS v. HENRY* (1912), 46 L. L. T. 308.—*IR.*

s. — — — — —.]—**Disobedience to order to pay taxed costs—Within term succeeding order.]**—When, as appeared by the clerk's *allocatur*, costs were taxed on a day later than that named in the clerk's appointment for taxation, & no explanation of the irregularity was offered, the ct. refused an application for the following term for an attachment for contempt in not paying the costs so taxed.—*SINCLAIR v. SINCLAIR* (1881), 20 N. B. R. 566.—*CAN.*

Non-criminal contempt.]—Motions for orders to commit for non-production are properly made in chambers.—*ROSS v. ROBERTSON* (1866), 2 Ch. Ch. 66.—*CAN.*

p. — — — — —.]—Where a party refuses to produce books, etc., as required, or refuses or neglects to attend for examination, or refuses to be sworn or to answer lawful questions, pursuant to such order, proceedings against him by attachment must be taken before the ct., & not in chambers.—*MERCHANTS BANK v. PIERSON* (1879), 8 P. R. 123.—*CAN.*

q. — — — — —.]—A motion to commit for breach of an injunction must be made in ct. & not in chambers.—*HARDIE v. LAVERY* (1887), 5 Man. L. R. 135.—*CAN.*

r. — — — — —.]—**Criminal contempt.]**—An application to attach a person for contempt of ct. in publishing in a newspaper, while an action is pending, comments upon the matter in question therein, is to be dealt with as a criminal matter, & should be made to the ct., & not in chambers.—*SOUTHWICK v. HARE* (1893), 15 P. R. 239, 331.—*CAN.*

PART VI. SECT. 5, SUB-SECT. 5.—C.

697 i. Must be made promptly—Lapse of considerable time.]—*It. v. WILKINSON, Re BROWN* (1877), 41 U. C. R. 47.—*CAN.*

697 ii. — — — — —.]—Libels complained of were published Dec. 30,

Sect. 5.—Evidence and procedure: Sub-sect. 5, C.; sub-sect. 6, A. & B.]

698. — Disobedience to subpoena.—Within term succeeding trial.]—A motion for an attachment against a person subpoenaed as a witness, for not attending at a trial, must be made within the term succeeding the trial, & a copy of such subpoena must be delivered personally at the time of service.—*THORPE v. GRAHAM* (1825), 3 Bing. 223; 11 Moore, C. P. 55; 4 L. J. O. S. C. P. 57; 130 E. R. 498.

699. — — — — —.]—An attachment for a contempt in disobeying a subpoena to attend as a witness at the trial of an indictment should be moved for in the term next ensuing the trial.

An indictment was tried on Dec. 11, & a rule nisi for an attachment against a party for such disobedience was moved for & obtained in Easter term:—*Held*: the rule would be discharged on the ground that the application had been too long delayed.—*R. v. STRETCH* (1835), 3 Ad. & El. 503; 4 Dowl. 30; 1 Har. & W. 322; 5 Nev. & M. K. B. 178; 111 E. R. 505.

See, further, EVIDENCE.

700. — Disobedience to award—Lapse of four years.]—After a lapse of four years from the making of an award, the ct. will not grant an attachment for its non-performance, without an affidavit explaining the delay.—*STOREY v. GARRY* (1840), 8 Dowl. 299; 4 Jur. 72.

701. — Misconduct *sedente curiâ*.]—The matters in a cause being referred to the master, an appointment was made at his office for Apr. 23, when notice was served on appct. to attend, & he attended accordingly. In the progress of the business before the master irritating & insulting language by the attorney on the opposite side was used towards appct., & under provocation he said that what was stated by the opposite attorney was false. When the business before the master was over, appct. left the office, & when on the upper step leading from it, was violently assaulted by M., an attorney of this ct. On motion for attachment against M.:—*Held*: as no application was on the instant made to the master against M., & as the remedies by indictment & criminal information were open, the application for an attachment would be refused.—*Ex p. WILTON* (1842), 1 Dowl. N. S. 805; *sub nom. Re MACLEOD*, 6 Jur. 461. *Annotation*:—*Consd. Re Johnson* (1887), 20 Q. B. D. 68.

702. Not on last day of term—Attachment for non-delivery of bill of costs.]—A rule nisi for an attachment against an attorney for a non-delivery of a bill of costs pursuant to a judge's order, cannot be granted on the last day of term. Nor will the ct. grant the rule to show cause at chambers, seeing that the attachment can only issue by the order of the ct.—*ASHMORE v. RYPLEY* (1840), 2 Scott, N. R. 203.

SUB-SECT. 6.—NOTICE OF MOTION.

A. Application must be made on.

See R. S. C., Ord. 44, r. 2.

703. In all cases.]—Under an order to tax made

in 1873, a balance was found due from a solr. in respect of moneys received by him, & ought to have been paid within 21 days from Aug. 21, 1875:—*Held*: the case was governed by *R. S. C.*, 1875, Ord. 44, r. 2, & that an attachment for non-payment could not be issued without notice to the solr.—*Re A SOLICITOR* (1875), 1 Ch. D. 445; 24 W. R. 103; 3 Char. Pr. Cas. 369.

Annotations:—*Consd. Dallas v. Glyn* (1876), 3 Ch. D. 190. *Refd. Re Morris, Morris v. Fowler* (1890), 44 Ch. D. 151; *Re Evans, Evans v. Noton* (1892), 41 W. R. 230.

704. — — — — —.]—An application for attachment for contempt of ct. must no longer be made by moving for a rule nisi, but notice must be given in accordance with the terms of *R. S. C.*, Ord. 44.—*BAIGENT v. BAIGENT* (1875), 1 P. D. 421; 1 Char. Pr. Cas. 146; *sub nom. In the Goods of BAIGENT*, 33 L. T. 462; 39 J. P. 824; 24 W. R. 43.

Annotation:—*Montd. In the Goods of Cartwright* (1876), 34 L. T. 72.

705. — — — — —.]—The new practice by which writs of attachment are only to be issued after notice to the party sought to be attached applies to all orders made subsequent to the Jud. Act, 1873 (c. 66), coming into force, & applies whether the suits in which the orders have been made are being carried on under the old or the new practice.—*DALLAS v. GLYN* (1876), 3 Ch. D. 190; 46 L. J. Ch. 51; 34 L. T. 897; 24 W. R. 881.

706. — — — — —.]—An attachment against the sheriff for not returning a writ of *fi. fa.* is not, as formerly, obtained as of course, but, since *R. S. C.*, Ord. 44, r. 2, can only be applied for "on notice."—*JUPP v. COOPER* (1879), 5 C. P. D. 26; 28 W. R. 324.

Annotation:—*Consd. Eynde v. Gould* (1882), 9 Q. B. D. 335.

707. — — — — —.]—An application, on notice, under *R. S. C.*, Ord. 44, r. 2, to attach the sheriff for not returning a writ of *fi. fa.* should be for an order nisi.—*FOWLER v. ASHFORD* (1881), 45 L. T. 46, D. C.

708. — — — — —.]—Under *R. S. C.*, Ord. 44, r. 2, a motion for an attachment for removing goods out of the custody of the sheriff can only be made on notice.

The words of *R. S. C.*, Ord. 44, r. 2, are perfectly plain & unambiguous; & if they are to be taken to mean what they say, a rule for an attachment cannot be entertained unless notice has been given (*LORD COLERIDGE, C.J.*).—*EYNDE v. GOULD* (1882), 9 Q. B. D. 335; 51 L. J. Q. B. 425; 31 W. R. 49, D. C.

709. — — — — —.]—*SQUIRE v. HAMMOND*, [1912] W. N. 200, D. C.

Service of affidavits with notice of motion.]—*See Sub-sect. 7, F., post.*

B. Form and Contents of.

See R. S. C., Ord. 52, r. 4.

710. General rule—Object of *R. S. C.*, Ord. 52, r. 4—Amendment.]—This was a motion by plffs. to renew the issue of a writ of attachment against deft. The notice of motion was marked before Mr. Justice Kekewich, but ought to have been marked before Mr. Justice Stirling as the judge who had seisin of the action. It was objected on behalf of deft., (a) that the motion could not be made before Kekewich, J., (b) that the motion

703 v. — — — — —.]—*BRENNAN v. CARROLL* (1844), 7 I. Eq. R. 196.—*IR.*

703 vi. — — — — —.]—*Not by summons.*]—An application for an attachment for contempt of ct. should be upon notice of motion, not by summons.—*VICKERMAN v. MACKENZIE* (1811), 19 W. L. R. 755; 4 Saak. L. R. 302.—*CAN.*

703 vii. — — — — —.]—*Distinction between old & new practice.*]—*COOTER v. OSBORNE* (1907), 17 Man. L. R. 164.—*CAN.*

PART VI. SECT. 5, SUB-SECT. 6.—A.

703 i. In all cases.]—Motions for attachment must be on notice.—*MORPHY v. FERHAN* (1866), 2 Ch. Ch. 53.—*CAN.*

703 ii. — — — — —.]—During trial by judge & jury of a pending action a newspaper published an article which might prejudice the jury against plffs. Upon motion by plffs. to commit deft. for

contempt of ct.:—*Held*: the motion was properly made on notice.—*HATFIELD v. HEALY* (1911), 18 W. L. R. 512.—*CAN.*

703 iii. — — — — —.]—A notice should be given of a motion for an attachment for a contempt of ct.—*BRETT v. BRETT* (1770), How. C. 62.—*IR.*

703 iv. — — — — —.]—*CUNNINGHAM v. M'CAMBIE* (1837), Sau. & Sc. 427.—*IR.*

was bad for irregularity, because no affidavits were served with the original notice of motion, & the original notice of motion did not state the grounds of it. Deft. had seen copies of the affidavits, subsequently to the service of the notice of motion, & had answered them:—*Held*: (1) (after conference between Kekewich & Stirling, J.J.), the question was one of irregularity, & not of nullity, & as it was one which Stirling, J., if the matter was before him, would have power to remedy by giving leave to amend the notice of motion, & Stirling, J. having requested Kekewich, J. to hear the motion, Kekewich, J. sitting as Stirling, J.'s viceregent *ad hoc*, leave would be given to amend the notice of motion by substituting, where necessary, "Mr. Justice Stirling" for "Mr. Justice Kekewich"; (2) the object of R. S. C., Ord. 52, r. 4, was, that a person whom it is sought to send to prison should know not only why the application is made, but also the evidence upon which it is to be made, so that he may have the opportunity of considering those matters together; (3) a party was entitled to take advantage of such objections, notwithstanding that he has answered the affidavits, & though he appears by counsel; (4) the ct. would not condone a direct non-compliance with the rules upon an application affecting the liberty of the subject.—*TAYLOR v. ROE* (1893), 68 L. T. 213; 3 R. 259.

Annotations:—*As to* (2) *Consd.* *Rendell v. Grundy*, [1895] 1 Q. B. 16. *Reid*, *Carter v. Roberts*, [1903] 2 Ch. 312.

711. Not in the alternative.—The ct. will not grant a rule requiring an attorney to deliver up papers, & in the alternative for an attachment in case of a non-delivery, but each branch must be made the subject of a separate motion.—*ROSCOE v. HARDMAN* (1836), 5 Dowl. 157; 2 Har. & W. 118.

712. "Grounds of the application"—Sufficiency of statement of—"Default in obeying"—Orders for payment into court.—*TREHERNE v. DALE*, No. 677, *ante*.

713. ——— Necessity to specify particular breach.—(1) A ct. of first instance cannot discharge an order made by a vacation judge, but it will in certain circumstances direct that no proceedings be taken in respect of that order except with the sanction of the ct. of first instance or of the Ct. of Appeal.

(2) Where a writ of attachment or a writ of sequestration is moved for on the ground of disobedience to an order containing a number of directions, the particular breach thereof complained of ought to be specified in the notice of motion, & in the order made thereon (*FARWELL, L.J.*).—*HIPKISS v. FELLOWS* (1909), 101 L. T. 701, C. A.

Annotation:—*As to* (2) *Consd.* *Brammall v. Mutual Industrial Corp.* (1915), 81 L. J. Ch. 474.

714. ————(1) Sunday is not to be reckoned in computing the "two clear days" required by R. S. C., Ord. 52, r. 5, to elapse between service of notice of motion & the day named for hearing.

(2) Upon motion for attachment against two directors of a co. for disobedience to an order

appointing a receiver of certain profits of the co. the grounds of the application must be stated in accordance with R. S. C., Ord. 52, r. 4. It is not sufficient compliance with the rule merely to serve a copy of the order of ct. with the notice of motion. The order might be disobeyed in several ways & the particular breach alleged must be specified.—*BRAMMALL v. MUTUAL INDUSTRIAL CORPN.* (1915), 84 L. J. Ch. 474; 112 L. T. 1071; 50 Sol. Jo. 382.

715. ——— Necessity to state—Mere service of order with notice of motion insufficient.—*BRAMMALL v. MUTUAL INDUSTRIAL CORPN.*, No. 714, *ante*.

716. Description of place of hearing—"At the Royal Courts of Justice"—Before vacation judge.—

(1) A notice of motion for attachment stating that the ct. would be moved at "The Royal Cts. of Justice" before the vacation judge, is a sufficient description of the place where the motion is to be heard.

Deft. lived in the country, & employed country solrs. who were represented in the action by their London agents. The notice of motion for attachment was served on the London agents, but the affidavits in support were served on the country solr.:—*Held*: (2) this was an irregular proceeding, & in contravention of R. S. C., Ord. 52, r. 4, which requires the notice of motion & the affidavits to be served together; & (3) of R. S. C., Ord. 67, r. 2, under which if not personally served they ought to have been served at the "address for service" within three miles of the "Central Hall of the Royal Cts. of Justice"—that is, at the London agent's address; (4) under R. S. C., Ord. 70, r. 1, the ct. had power to condone this irregularity.—*PETTY v. DANIEL* (1886), 34 Ch. D. 172; 56 L. J. Ch. 192; 55 L. T. 745; 35 W. R. 15.

Annotations:—*As to* (2) *Reid*, *Re Martin & Varlow* (1894), 43 W. R. 247; *Smythe v. Wiles*, [1921] 2 K. B. 66. *As to* (4) *Consd.* *Taylor v. Roe*, [1893] W. N. 14; *Re Evans, Evans v. Noton*, [1893] 1 Ch. 252. *Reid*, *Smythe v. Wiles*, [1921] 2 K. B. 66. *Generally*, *Menté*, *Re Weatherley* (1918), 88 L. J. K. B. 482.

717. How intitled.—*O'SHEA v. O'SHEA & PARNELL*, No. 11, *ante*.

718. ——— Undertaking to enter appearance—By solicitor.—An application by a plff. under R. S. C., Ord. 12, r. 18, to enforce by attachment a written undertaking by deft.'s solr. to enter an appearance to the writ, should be made & intitled not in the action, but in the matter of the solr. by virtue of the jurisdiction of the ct. over its officers.

A written undertaking by a solr. acting on the authority of deft., to enter an appearance to the writ, constitutes a contract on the part of deft. by the solr. or his agent to enter appearance, & differs from an ordinary contract only in that it may be enforced against the solr. himself by attachment at any time within six years, provided the action continues effective (*FARWELL, J.*).—*Re KERLY, SON & VERDEN*, [1901] 1 Ch. 487; 70 L. J. Ch. 189; 83 L. T. 524, 699; 49 W. R. 199, 211; 17 T. L. R. 123, 189; 45 Sol. Jo. 120, 206, C. A.

719. ——— Name of stranger to proceedings.—*Re LAW*, [1914] W. N. 258.

PART VI. SECT. 5, SUB-SECT. 6.—B.

712 i. "Grounds of the application"—Sufficiency of statement of—"Default in obeying"—Order to produce documents.—On a motion to commit for non-production of certain documents after an insufficient affidavit on production has been filed, it is not absolutely necessary that the notice of motion should specify what is demanded in addition to what has been produced, though such is the better course.—

FISKEN v. SMITH (1869), 2 Ch. Ch. 491.—*CAN.*

712 ii. ——— Injunction issued under "seal of this honourable court."—A motion to commit for breach of the "injunction issued in this cause under the seal of this honourable ct." is wrong in form.—*LANE v. HANNAH* (1861), 1 W. & W. 66.—*AUS.*

713 i. ——— Necessity to specify particular breach.—On a motion to commit deft. for non-compliance with

a decree:—*Held*: when deft. knew what acts were complained of, it was not necessary to repeat them in the notice of motion.—*GRASSETT v. CARTER* (1884), 6 O. R. 584.—*CAN.*

717 i. How intitled.—Where notice of motion is addressed to "def't." there is no room for doubt as to its meaning, & it is not necessary that his name should be mentioned in the style of cause.—*HATFIELD v. HEALY* (1911), 18 W. L. R. 512.—*CAN.*

Sect. 5.—Evidence and procedure: Sub-sect 6, B. & C. (a) i., ii. & iii.]

720. Length of notice.—“Two clear days”—Sunday excluded.]—BRAMMALL v. MUTUAL INDUSTRIAL CORPN., No. 714, *ante*.

As to service of copy of affidavits with notice, *see* Sub-sect. 7, F., *post*.

C. Necessity for Personal Service.

(a) Motions for Attachment.

i. In General.

721. General rule.]—An attachment will not be granted without personal service when there is another remedy, *e.g.* action.—RICHMOND v. PARKINSON (1835), 3 Dowl. 703.

722. —.]—There must be personal service of the rule *nisi* for an attachment, though there has been personal service of the rule for disobedience to which the rule *nisi* for the attachment issued.—BIRKET v. HOLME (1836), 1 Har. & W. 659.

723. —.]—*Semble*: there must be personal service of a rule *nisi* for an attachment.—*Re* WESTAKE, *Ex p.* EDWARDS (1837), 1 Jur. 984; *subsequent proceedings* (1838), 2 Jur. 17.

724. —.]—The ct. will not dispense with personal service of a rule for an attachment, in a case where the person sought to be served is an attorney, & the attempts to serve him personally have been ineffectual.—WILKINSON v. PENNINGTON (1837), 6 Dowl. 183; 5 Scott 401.

Annotation—*Fold. It* PYNE (1843), 1 Dow. & L. 703

725. —.]—This ct. refused to make a rule absolute for an attachment, where the service of the rule *nisi* had been on the wife of deft. at his dwelling-house, the person affecting the service exhibiting the original.

It does not here appear to the ct. that there is any difficulty in personal service (COLERIDGE, J.).—*Re* GUARD (1842), 6 Jur. 916.

726. —.]—*Re* PYNE, No. 753, *post*.

727. —.]—Motion for a rule calling upon a woman & her husband, the former having been admitted as next friend to the infant lessors of plff. but who had been made no party to the consent rule, to show cause why they should not pay the costs of the nonsuit herein, why an attachment should not issue for the same, or why she should not be made a party to the consent rule. Application was made for liberty to serve the rule on the attorney:—*Held*: as it was for an attachment the service must be personal.—DOE d. GLYNDS v. ROE (1845), 6 L. T. O. S. 132.

728. —.]—*Re* PORTEIT, *Ex p.* KEATES (1853), 20 L. T. O. S. 243.

729. —.]—The ct. will not dispense with personal service of a rule *nisi* for an attachment for disobedience of a rule.—SWINFEN v. SWINFEN (1857), 1 C. B. N. S. 364; 28 L. T. O. S. 88; 140 R. R. 150.

Annotations :—*Mentd.* Chambers v. Mason (1858), 5 C. B. N. S. 59; Thomas v. Harris (1858), 27 L. J. Ex. 353; Swinfen v. Bacon, Swinfen v. Lewis (1861), 5 L. T. 83; Brown v. Kennedy (1863), 9 Jur. N. S. 1163; Chown v. Parrott (1863), 14 C. B. N. S. 74; Harding v. Chowne (1863), 1 New Rep. 284; Prestwich v. Polcy (1865), 18 C. B. N. S. 806; Strauss v. Francis (1866), L. R. 1 Q. B. 379; Mathews v. Munster (1887), 51 J. P. 615; Neale v. Gordon Lennox, [1902] 1 K. B. 838.

720 i. Length of notice.]—Four days' notice must be given of a motion to commit.—GRAY v. HATCH (1866), 2 Ch. Ch. 12.—*CAN.*

720 ii. —.]—BROUGHALL v. HE TOR (1869), 2 Ch. Ch. 434.—*CAN.*

PART VI. SECT. 5, SUB-SECT. 6.—C. (a) i.

721 i. General rule.]—A rule *nisi* for

an attachment must be personally served, & the original shown.—CRYSLER v. CAMPBELL (1844), 1 U. C. R. 416.—*CAN.*

730 i. Service on solicitor.]—Upon motion for a writ of attachment against the manager of deft. co. for disobeying an injunction. A notice of motion for attachment was not personally served on deft. but only on his solr.:—*Held*: personal service

730. Service on solicitor on record.—R. S. C., Ord. 44, r. 2.]—Where a notice of motion is given for a writ of attachment to issue against deft. under R. S. C., Ord. 44, r. 2, service of such notice on the solr. on the record of deft. is sufficient service.—BROWNING v. SABIN (1877), 5 Ch. D. 511; 46 L. J. Ch. 728.

Annotations :—*Expld. It* A Solicitor (1880), 14 Ch. D. 152. *Consd.* Petty v. Daniel (1886), 55 L. T. 745. *Refd.* Howarth v. Howarth (1886), 11 P. D. 95; *Re* Evans, Evans v. Noton (1892), 41 W. R. 230.

731. —.]—A notice of motion under R. S. C., Ord. 41, r. 2, for leave to issue a writ of attachment is sufficiently served when served upon the solr. upon the record of the party against whom the attachment is to issue.—RICHARDS v. KITCHIN (1877), 36 L. T. 730; 25 W. R. 602.

732. —.]—Under ordinary circumstances a notice of motion for a writ of attachment to issue against a party should be served personally, & not merely on the solr. on the record of the party.—MANN v. PERRY (1881), 50 L. J. Ch. 251; 44 L. T. 248.

Annotation—*Consd.* Howarth v. Howarth (1886), 11 P. D. 95.

733. —.]—*Breach of undertaking.]*—There is no distinction, in regard to the service of a notice of motion for leave to issue a writ of attachment, between contempt in breach of an undertaking & contempt in breach of an injunction.

Deft. in an action had committed a breach of his undertaking contained in an order of the ct., made on motion for an injunction, & personal service of a motion for leave to issue a writ of attachment against him could not be effected. Plff. served a copy of the present notice of motion on deft.'s solr. who was on the record of the action. The question arose whether this was sufficient service under R. S. C., Ord. 44, r. 2, & Ord. 67, r. 7:—*Held*: the order would be made upon affidavit of service upon the solr. who had acted for deft. in the action, notwithstanding that he had ceased so to act shortly after the date of the undertaking.

So long as any order made in the action is not worked out, or so long as anything remains for working out the judgment the solr. on the record remains the solr., & the trial of the action does not terminate that relation. Service on the solr. on the record of the notice of motion to attach deft. was sufficient. It was good service on deft. (HITTY, J.).—CALLOW v. YOUNG (1886), 55 L. T. 543; *subsequent proceedings* (1887), 56 L. J. Ch. 690.

Annotations :—*Consd.* D v. A., [1900] 1 Ch. 484. *Refd.* *Re* Launder, Launder v. Richards (1908), 98 L. T. 554.

734. Service at address for service sufficient.]—PETTY v. DANIEL, No. 716, *ante*.

735. Substituted service.—Power to order.]—Where an application was made supported by affidavit for an order for substituted service of a notice of an application for an attachment:—*Held*: there was no power to make such an order except in the case of the writ of summons in an action.—ANON. (1876), 2 Char. Cham. Cas. 16; Bitt. Prac. Cas. 139.

736. —.]—*Necessity for leave to effect.]*—*Re* DAVIS, [1887] W. N. 252.

737. —.]—*In Probate Division.]*—In the Probate Div. when personal service of notice of motion

of a notice of motion is an essential pre-requisite to committal.—GOLDEN GATE MINING CO. v. GRANITE CREEK MINING CO. (1890), 5 B. C. R. 145.—*CAN.*

730 ii. —.]—A motion for attachment should be served on deft. personally, service on his solr. not being sufficient.—PARKER v. DODSON (1914), 33 N. Z. L. R. 1313.—*N.Z.*

to attach for non-compliance with an order cannot be effected & the original order has been duly served, substituted service, by analogy to the practice in the other divisions of the High Ct., is sufficient.—*HOWARTH v. HOWARTH* (1886), 11 P. D. 95; 55 L. J. P. 49; 55 L. T. 303; 34 W. R. 633; 2 T. L. R. 705, C. A.

Annotation:—*Reid. Re Evans, Evans v. Noton*, [1893] 1 Ch. 252.

738. Service on clerk of solicitor—Motion to attach solicitor for non-delivery of bill of costs.—A notice of motion to attach a solr. for non-compliance with an order to deliver a bill of costs, obtained on petition of course, was served on the solr.'s clerk at the solr.'s office, there being difficulty in effecting personal service. The order had been served personally:—*Held*: the service of the notice of motion was insufficient; but leave would be given to re-serve the notice of motion by leaving it at the solr.'s office.—*Re DANCE*, [1895] W. N. 127.

Where respondent has knowledge of proceedings.—*See* Sub-sect. 6, C. (a), ii., *post*.

Where respondent evading service.—*See* Sub-sect. 6, C. (a), iii., *post*.

ii. Where Respondent has Knowledge of Application.

739. Shown by respondent's affidavit—Substituted service ordered.—Where a rule *nisi* for attachment had not been served on T. but there was an affidavit of T. before the master which showed that he knew of the rules, the ct. refused to make the rule absolute but directed substituted service upon T.'s attorney.—*THOMAS'S CASE* (1718), 11 Mod. Rep. 284; 88 E. R. 1043.

740. Shown by applicant's affidavits.—A rule absolute will be granted for an attachment without a direct affidavit of personal service of the rule *nisi*, if the affidavits disclose circumstances to satisfy the ct. that the rule *nisi* has reached the hands of the party, though they show that he is keeping out of the way to avoid service.—*Re MORRIS* (1853), Bail Ct. Cas. 190; 22 L. J. Q. B. 417; 21 L. T. O. S. 170; 1 C. L. R. 522.

741.—On a motion to make absolute a rule for an attachment for not delivering a bill of costs, no cause was shown, but the rule had not been personally served. The affidavits however, laid sufficient ground to induce the ct. to believe that it had come to the knowledge of the attorney: *Held*: the rule should be made absolute.—*Re* — (1856), 27 L. T. O. S. 185.

Respondent evading service.—*See* Sub-sect. 6, C. (a) iii., *post*.

iii. Respondent evading Service.

742. Whether personal service dispensed with.—Where a copy of a rule *nisi* for an attachment was delivered to deft.'s son, who refused to say where his father was, & an appointment was made for a subsequent day, but the deponent was unable to see deft.:—*Held*: this was not sufficient to dispense with personal service.—*Re IBBERTSON* (1836), 5 Dowl. 160.

743. Evasion by attorney.—*Re PYNE*, No. 753, *post*.

744. Service on wife.—Service of the rule *nisi* for an attachment for non-payment of an award had been on deft.'s wife, & there was reason to believe deft. himself had kept out of the way, & had ultimately received the rule:—*Held*: personal service would be dispensed with, & the rule

made absolute on service on the wife.—*POTTER v. WILLIAMS* (1842), 6 Jur. 508.

745.—Where a party has been duly subpoenaed by the Crown to give evidence, & disobeys the exigency of the writ, the ct. will grant an attachment, & make it a part of the rule that service on his wife may be valid, it being sworn, that his wife had said he was absent from home, & had gone out of the way till the affair was over.—*A.-G. v. YATES* (1811), 8 J. P. 644.

746.—*Semble*: the ct. will dispense with personal service of a rule for an attachment, in cases where there is no other remedy, & it is clear that the party keeps out of the way to avoid service.—*Re WHALLEY* (1815), 14 M. & W. 731; 3 Dow. & L. 291; 15 L. J. Ex. 4; 9 Jur. 995; 153 E. R. 670.

Annotation:—*Reid. Turner v. Blundell* (1848), 12 L. T. O. S. 177.

747.—*Re MORRIS*, No. 740, *ante*.

748. Answers to interrogatories.—A rule *nisi* had been granted, calling on deft. to show cause why an attachment should not issue against him for not answering interrogatories pursuant to a judge's order. The clerk to plff.'s attorney swore that on his calling at deft.'s residence he was told he was within, but would see no one, & that, on it being explained that the object was to serve him with the rule *nisi*, he was heard to say that he would not be seen, for that plff. had got him tight enough:—*Held*: the contempt was complete on deft.'s neglecting to answer the interrogatories within the time mentioned in C. L. P. Act, 1854 (c. 125), s. 51, & the rule would be made absolute without requiring personal service.

It is requisite in such cases to do all that is reasonably necessary to protect a man from an attachment being issued against him without due notice, but here we think that under the circumstances you have done enough to satisfy us (*CROMPTON, J.*).—*SPAFFIELD (LORD) v. PRATT* (1862), 5 L. T. 674.

749. Respondent out of jurisdiction.—*FAVARD v. FAVARD*, No. 597, *ante*.

750.—Upon the authority of *Favard v. Favard* [No. 597, *ante*] a writ of attachment & a committal order were directed to be issued upon the *ex p.* application of petitioner against resp., who had taken a child, the custody of whom was in question, out of the jurisdiction.—*GORDON v. GORDON*, [1903] P. 141; 72 L. J. P. 33; 89 L. T. 73; *on appeal*, [1904] P. 163, C. A. *Annotations*:—*Fold. R. v. Wigand, Re Wigand* (1913), 82 L. J. K. B. 735. *Mentd. Evans v. Evans & Blyth* (1904), 20 T. L. R. 612.

751. & substituted service ordered—At house of respondent.—Service of all processes intended to bring a party into contempt, should be personal if possible; but if it can be made appear to the ct. that service cannot be effected personally, & that there was probable cause to suspect that the party kept out of the way for the purpose of avoiding such personal service, the ct. will grant a rule *nisi* for an attachment, & order that service, by leaving the rule at the dwelling-house, shall be sufficient.—*WESTON v. FAULKNER* (1815), 2 Price, 2; 146 E. R. 1. *Annotation*:—*Reid. Levy v. Duncombe* (1835), 1 Gale, 60.

752.—Rules for an attachment must be served personally.

Upon an affidavit, that defts. were "shy & difficult to be met with" & that deponent had

PART VI. SECT. 5, SUB-SECT. 6.—C. (a) iii.

751 i. Whether personal service dispensed with—& substituted service ordered.—*SLACK v. ATKINSON, Re* J.—VOL. XVI.

SLACK (1892), 4 V. R. (Eq.) 230.—AUS.

751 ii.—By posting notice on door of residence.—Where personal service was impossible, the ct. made

an order for substitution of service of notice of motion to attach by posting the notice upon the door of resp.'s residence.—*O'NEILL v. M'ERLEAN* (1896), 30 J. L. T. 162.—IR.

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(a) *iii.*, *iv.* & *v.*, (b) & *D.*]

tried all the means in his power, by two months, before he could serve defts. personally with the award, for the non-performance of which the attachment was sought to be enforced:—*Held*: the ct. would refuse to order that service at the dwelling-house should be deemed good service of a rule for an attachment.—*GARLAND v. GOULDEN* (1828), 2 Y. & J. 89; 148 E. R. 844.

753. ——— **At office of respondent.]**—Personal service of a rule for an attachment cannot be dispensed with, even though the person sought to be served is an attorney, & though it may be inferred that he has systematically obstructed all attempts at such personal service. Neither will the ct. substitute service by sticking a copy of the rule *nisi* in the Q. B., & leaving another copy at plttf.'s place of business, but will enlarge the rule to give further time to effect personal service.—*Re PYNE* (1843), 1 Dow. & L. 703; 13 L. J. Q. B. 37; *sub nom.* ——— *v. PYNE*, 7 Jur. 1109.

754. ——— ——— *Re DANCE*, No. 738, *ante*.

755. ——— ——— *Re DANCE* was adduced on an *ex p.* motion to show that a solr. was keeping out of the way in order to avoid personal service of a notice of motion for a writ of attachment to issue against him:—*Held*: the ct. would order that service of the notice of motion, by leaving during business hours a copy of the notice of motion, together with a copy of the order to be made on the *ex p.* application before the ct., & copies of the affidavits in support of the motion, at the solr.'s office, should be deemed good service of the notice of motion on the solr.—*Re A SOLICITOR* (1916), 60 Sol. Jo. 708.

756. ——— **On solicitor of respondent.]**—The ct. will not grant a rule that service of attachment on deft.'s attorney shall be sufficient, although it be sworn that repeated attempts have been made to serve deft. personally, but he was not to be found, & although it is suggested that deft. keeps out of the way to avoid being served.—*READ v. FORE* (1819), 1 Chit. 170.

757. ——— ——— *Re LUXMORE*, *GORDON v. WOODS*, [1888] W. N. 63.

758. ——— **On agent of respondent.]**—A rule for an attachment having been granted, personal service was evaded by the party's riding away at a swift rate from the clerk, who was about to serve it. On these facts being stated, the ct. ordered the service to be made on deft.'s agent; & that a rule should be moved for to show cause why, under the above circumstances, that service should not be deemed good service.—*ANON.* (1825), 3 L. J. O. S. K. B. 237.

759. ——— **By posting rule in Queen's Bench.—Where respondent a solicitor.]**—*Re PYNE*, No. 753, *ante*.

iv. Against Defendant in Action where No Appearance entered.

760. Motion filed in court—R. S. C., Ord. 67, r. 4.]—A notice of motion for leave to issue a writ of attachment is sufficiently served where the party against whom the attachment is to be issued has not entered any appearance, by filing it with the proper officer, pursuant to R. S. C.,

Ord. 67, r. 4.—*Re MORRIS*, *MORRIS v. FOWLER* (1890), 44 Ch. D. 151; 59 L. J. Ch. 407; 62 L. T. 758; 38 W. R. 522.

Annotations:—*Consd. Re EVANS*, *EVANS v. NOTON*, [1893] 1 Ch. 252. *Distd. Re BASSOTT*, *Bassett v. Bassett* (1894), 38 Sol. Jo. 564.

761. ——— ——— *Re EVANS*, *EVANS v. NOTON*, No. 21, *ante*.

762. ——— **Where no difficulty in serving respondent.]**—An order was made that deft., who had not entered an appearance in the action, should, within 15 days after service of the order, leave at the chambers of the judge certain accounts & statements. The order was served on deft. personally on May 12. Deft. did not comply with the order, & on June 8 plttf. gave notice of motion for leave to issue an attachment against him. The notice was not served on deft., but was filed with the officer of the ct. pursuant to R. S. C., Ord. 67, r. 4:—*Held*: as plttf. evidently knew where to find deft., leave ought not to be given to issue an attachment unless notice of the motion was served on deft.—*Re BASSETT*, *BASSETT v. BASSETT*, [1891] 3 Ch. 179; 63 L. J. Ch. 814; 38 Sol. Jo. 561; 8 R. 171.

v. Waiver by Respondent.

763. By obtaining enlargement of rule.]—If a party against whom a rule is granted, obtains its enlargement, he cannot afterwards object that it was not personally served.—*CARTWRIGHT v. BLACKWORTH* (1832), 1 Dowl. 489.

Annotations:—*Follid. Ex p. Alcock* (1875), 1 C. P. D. 68. *Mentd. Donlan v. Breit* (1834), 2 Ad. & El. 344; *Cock v. Gent* (1844), 13 M. & W. 364.

764. By consenting to enlargement of rule.]—A rule for an attachment against a solr. for non-delivery of a bill of costs pursuant to a judge's order stood in the peremptory paper for Nov. 9, but could not be argued on that day, & by consent of counsel on both sides it was adjourned. Counsel for the solr. not appearing on the adjourned day:—*Held*: the appearance of counsel & his consenting to the rule being enlarged was a waiver of personal service, & the rule would be made absolute.—*Ex p. ALCOCK* (1875), 1 C. P. D. 68; 33 L. T. 532; 24 W. R. 320; *sub nom. Re A SOLICITOR*, 45 L. J. Q. B. 86.

Annotations:—*Distd. Re Cunningham* (1886), 55 L. T. 766; *R. v. Rowe* (1894), 71 L. T. 578.

765. By appearing to object.—To want of personal service.]—Where a rule *nisi* issues, to show cause why an attachment should not issue for not obeying a judge's order which has been made a rule of ct., & the rule *nisi* is not personally served, but the party appears upon it & objects to the want of personal service, such appearance waives the necessity of a personal service.—*LEVI v. DUNCOMBE* (1835), 1 Cr. M. & R. 737; 5 Tyr. 490; 149 E. R. 1277; *sub nom. LEVI v. DUNCOMBE*, 3 Dowl. 447; 1 Gale, 60.

Annotations:—*Distd. Birkot v. Holme* (1836), 1 Har. & W. 659. *Consd. Re Westlake*, *Ex p. Edwards* (1837), 1 Jur. 984.

(b) Motions for Committal.

766. General rule.]—(1) Notice of motion to commit deft. must be served upon him personally if practicable, service upon his solr. being insufficient; & the ct. will not make an order for substituted service until it is satisfied that every endeavour has been made to effect personal service.

PART VI. SECT. 5, SUB-SECT. 6.—
C. (a) v.

t. Not by adjournments at respondent's request.]—Upon motion for a writ of attachment against the manager of deft. co. for disobeying an

injunction it was objected that notice of motion was not personally served on manager, but only on deft. co.'s solr.:—*Held*: the want of personal service of the notice of motion was not waived by adjournments at his request.—*GOLDEN GATE MINING CO. v. GRANITE*

CREEK MINING CO. (1896), 5 B. C. R. 145.—*CAN.*

765 i. By appearance.]—Personal service of a rule *nisi* for an attachment is waived by appearance.—*STARR MANUFACTURING CO., LTD. v. FAIRBANKS* (1872), 9 N. S. R. 46.—*CAN.*

Mere knowledge on the part of deft. of pltf.'s intention to move to commit does not dispense with the necessity of endeavouring to effect personal service.

(2) The appearance of deft. upon the motion is not a waiver of any objection on his part on the ground either of want of personal service or of any irregularity.—*MANDER v. FALCKE*, [1891] 3 Ch. 488; 61 L. J. Ch. 3; 64 L. T. 791; 40 W. R. 31.

767. Must be personal.—An application was made without notice to commit deft. for a contempt in abuse of the process of the ct.:—*Held*: he would be committed, unless he showed cause to the contrary on personal notice.—*VAN v. PRICE* (1743), Dick. 91; 21 E. R. 202.

768. Breach of injunction.—Upon breach of an injunction restraining an act, the proper course is personal service of notice of motion that deft. shall stand committed; it is not the practice to move that he shall show cause why he shall not stand committed.—*ANGERSTEIN v. HUNT* (1801), 6 Ves. 488; 31 E. R. 1158.

Annotation:—*Refd.* *Durant v. Moore* (1830), 2 Russ. & M. 33.

769. ———]—Personal service of a notice of motion to commit for breach of an injunction is necessary, & cannot be dispensed with, though counsel undertake to appear for the party.—*ELLEERTON v. THURSK* (1820), 1 Jac. & W. 376; 37 E. R. 419.

Annotations:—*Consd.* *Nelson v. Worssam*, [1890] W. N. 216; *Mander v. Falcke*, [1891] 3 Ch. 488. *Mentd.* *McNeil v. Garratt* (1841), 10 L. J. Ch. 297.

770. ———]—**Order nisi.**—An order that a deft. in contempt for breach of an injunction shall stand committed, unless cause be shown on a stated day, is not irregular if it be personally served.—*DURANT v. MOORE* (1830), 2 Russ. & M. 33; 9 L. J. O. S. Ch. 12; 39 E. R. 307, L. C.

771. ———]—Upon a motion to commit, it being necessary that personal service should be made upon the party sought to be committed, it is not necessary, in addition, to serve the notice on the clerk in ct.—*BOWDLER v. BOWDLER* (1840), 9 L. J. Ch. 394; 4 Jur. 626.

772. ———]—**By married woman—Separate appearance.**—(1) Where a wife is living separate from her husband, & abroad, though she has appeared jointly with him by the same solr. in all the proceedings in the cause, a notice of motion to commit for contempt must be served upon her personally, & substituted service ought not to be ordered.

(2) Either pltf. or the husband may obtain an order for the wife's separate appearance.—*HOPE v. CARNEGIE* (1868), L. R. 7 Eq. 254; *sub nom.* *HOPE v. HOPE*, *HOPE v. CARNEGIE*, 19 L. T. 374; *on appeal* (1869), 4 Ch. App. 264, L.J.J.; *subsequent proceedings* (1869), L. R. 7 Eq. 263.

773. ———]—On motion by pltf. for an injunction to restrain deft. from representing his business as that of pltf., deft. by his counsel, gave an undertaking not to use a certain name as the trade name until the trial, & the motion was directed to stand over. Dft. having committed

a breach of the undertaking, notice of motion to commit to prison was given. Dft. objected that it had not been personally served on him:—*Held*: the motion would stand over in order that deft. might be served personally.—*NELSON v. WORSSAM*, [1890] W. N. 216.

Annotation:—*Consd.* *Mander v. Falcke*, [1891] 3 Ch. 488.

774. ———]—*D. v. A. & Co.*, No. 499, *ante*.

775. Notice may be served in vacation—In case of urgency.—*BENNETT v. ELBOROUGH* (1892), 36 Sol. Jo. 729.

776. Not waived by appearance on motion.—*MANDER v. FALCKE*, No. 766, *ante*.

D. Sufficiency of Service.

777. On Sunday.—A rule nisi for an attachment for non-payment of money, pursuant to the master's *allocatur*, cannot be served on a Sunday.—*MCLEHAM v. SMITH* (1798), 8 Term Rep. 86; 101 E. R. 1281.

Annotation:—*Refd.* *Rawlins v. West Derby Overseers* (1846), 1 Lut. Reg. Cas. 373.

778. Service at dwelling-house—Original must be shown.—A rule nisi was served by putting a copy under the door of deft.'s house & acquainting deft., who was in the house, with the contents:—*Held*: this was insufficient service, it being necessary that the original rule should be shown to the party at the time of service.—*R. v. PIKE* (1733), Barnes, 403; 94 E. R. 976.

779. ———]—**R. S. C., Ord. 44, r. 2.**—A notice of motion in any action or matter for the issue of a writ of attachment, under R. S. C., Ord. 44, r. 2, may be served by leaving the same at the place of residence of the party affected thereby.—*Re A SOLICITOR* (1880), 14 Ch. D. 152; 49 L. J. Ch. 295; 42 L. T. 310; *sub nom.* *Re RYAN*, 28 W. R. 529.

Annotations:—*Refd.* *Re Morris*, *Morris v. Fowler* (1890), 44 Ch. D. 151; *Re Evans*, *Evans v. Noton* (1892), 41 W. R. 230.

780. Service on clerk in court.—Service was effected on the clerk in ct. on deft., with a notice of motion, that he might stand committed, for breach of an injunction:—*Held*: this was good service.—*RUGG v. FLOYER* (1773), Dick. 478; 21 E. R. 355.

781. On servant—Not at dwelling-house.—On motion to make absolute a rule for an attachment, on an affidavit of service of the rule on a servant of the party, not at his dwelling-house:—*Held*: the service was insufficient.

There is no case of service on a servant being held good, unless it be at the dwelling-house, where all proceedings not required to be personally served should be left (*per Cur.*).—*v.* ——— (1815), 2 Price, 4; 146 E. R. 2.

782. As to time.—Where a reasonable time had not been given between the day of serving a rule for an attachment & the day of showing cause, the ct., on making the rule absolute, directed the attachment to lie in the office a few days, until notice of that step being taken should be given to deft.—*Re v. GILES* (1836), 4 Dowl. 569.

Service of affidavit with notice of motion.—*See* Sub-sect. 7, F., *post*.

PART VI. SECT. 5, SUB-SECT. 6.—C. (b).

787 i. Must be personal.—An application to commit will not be granted *ex parte*; notice should be served on resp.—*BLAIN v. TERRYBERRY* (1864), 1 Ch. Ch. 255.—*CAN.*

787 ii. ———]—*PATTERSON v. BOWES* (1853) 4 Gr. 44.—*CAN.*

788 i. ———]—**Breach of injunction.**—*MELLING v. ELLIS* (1861), 7 U. C. L. J. O. S. 18.—*CAN.*

a. Service on solicitor.—A notice of motion to commit for contempt should be served on deft.'s solr., not on deft. personally.—*ROSS v. ROBERTSON* (1866), 2 Ch. Ch. 66.—*CAN.*

b. ———]—*GOURLAY v. RIDDLE* (1867), 2 Ch. Ch. 158.—*CAN.*

c. ———]—**Where defendant not party to cause.**—Notice of motion to commit a person not a party to a cause for contempt in disobeying an order need not be personally served where the

party has a solr.—*WILSON v. WILSON* (1876), 7 P. R. 57.—*CAN.*

d. Whether waived by appearance by counsel & by filing affidavits.—Though personal service of a notice of motion is necessary in a motion to commit, a person who appears by counsel, & on whose behalf affidavits have been filed, must be held to have waived the point as to non-personal service.—*Re DOYLE LOCAL GOVERNMENT ELECTION PETITION* (1905), 39 L. L. T. 243.—*IR.*

Sect. 5.—Evidence and procedure: Sub-sect. 6, E. & F.; sub-sect. 7, A., B., C., D. & E. (a) & (b).]

E. Affidavits of Service.

See R. S. C., Ord. 38, r. 1, Ord. 52, r. 4, & generally, EVIDENCE.

783. Necessity for.]—In all cases of commitment there must be an affidavit of service.—*WHITHEAD v. THISTLETHWAIT* (1747), 3 Atk. 619; 26 E. R. 1156.

784. —.]—No attachment to issue in future without an affidavit previously filed.—*BROOMHEAD v. SMITH* (1803), 8 Ves. 357; 32 E. R. 393, 1 L. C.

Annotations:—Consd. Gardner v. Rowe (1828), 4 Russ. 578. *Mentd. Boehm v. De Tastet* (1813), 1 Ves. & B. 324.

785. —.]—An attachment against the sheriff, for not bringing in the body, can only be granted on an affidavit of service of the rule; & no evidence, however strong, that the sheriff had received the rule, will supply the want of it.—*HARMER v. TILT* (1816), 2 Marsh. 251.

786. —.]—*TAYLOR v. ROE*, No. 710, *ante*.

Necessity for affidavits in support.]—*See Sub-sect. 7, F. (a), post.*

787. Copy of order to be annexed to or recited in.]—An attachment will not be granted for non-payment of money pursuant to order, unless a copy of the order be annexed to or recited in the affidavit of service.—*LIDMORE v. LIDMORE* (1863), 32 L. J. P. M. & A. 134.

Service of affidavits with notice of motion.]—*See Sub-sect. 7, F., post.*

Contents of affidavits in support.]—*See Sub-sect. 7, E., post.*

F. Amendment of.

788. To add committal to attachment.]—*CALLOW v. YOUNG*, No. 496, *ante*.

Distinction between attachment & committal, *see Sect. 2, ante*.

789. Where marked with name of wrong judge.]—*TAYLOR v. ROE*, No. 710, *ante*.

790. Amendment of title—Addition of name—R. S. C., Ord. 28, r. 12.]—*Re LAW*, [1914] W. N. 258.

SUB-SECT. 7.—AFFIDAVITS IN SUPPORT.

A. Necessity for.

791. When dispensed with—Report of registrar as to refusal of witness to be sworn.]—*Re DEBTOR, Ex p. PETITIONING CREDITORS & DEBTOR* (1907), *Times*, May 14.

B. By Whom made.

792. Payment directed to several persons—Affidavit by one sufficient.]—A rule of ct. directed a sum of money to be paid to deft. or his attorneys. The affidavit of one of deft.'s attorneys stated a demand & refusal, & that the money had not been

paid to him, & that he believed it was still unpaid:—*Held*: this affidavit was sufficient to grant an attachment, without an affidavit from the other partner.—*THEMANS v. FENN* (1837), Will. Woll. & Dav. 217.

793. Non-delivery of bill of costs—Affidavit by person to whom delivery ordered.]—The affidavit, to ground an attachment against an attorney for not delivering a bill of costs under a judge's order, must be made by the person to whom the bill is by the judge's order directed to be delivered, & the affidavit of his managing clerk is insufficient.—*POTTER v. BARK* (1841), 5 Jur. 294.

C. Form of.

794. How intitled.]—Motions & affidavits for attachments in civil suits are proceedings on the civil side of the ct. until the attachments issue, & are to be intitled with the names of the parties. As soon as the attachments issue, the proceedings are on the Crown side, & from that time the King is to be named as the prosecutor.—*WOOD v. WEBB* (1789), 3 Term Rep. 253; 100 E. R. 560.

795. — Attachment against sheriff.]—The affidavit for an attachment against the sheriff, should be intitled *R. v. Sheriff of —*, in the cause of *— v. —*, with the christian names of the parties.—*R. v. MIDDLESEX (SHERIFF)* (1823), 2 L. J. O. S. K. B. 38.

796. —.]—An attachment may be said to be granted when the rule for the attachment is obtained, & after that the proceedings are on the Crown side of the ct., & affidavits in the matter are properly intitled *R. v. The Sheriff of —*.—*R. v. MIDDLESEX (SHERIFF), Re BARTON v. MORGAN* (1836), 2 M. & W. 107; 2 Gale, 221; 6 L. J. Ex. 9; 150 E. R. 689.

797. — Motion to set aside attachment against sheriff.]—Affidavits to set aside an attachment that has been granted though not issued, in the course of a civil suit must be intitled *R. v. party to be attached, etc.*—*R. v. MIDDLESEX (SHERIFF)* (1797), 7 Term Rep. 439; 101 E. R. 1065.

Annotation:—Refd. R. v. Middlesex (1798), 7 Term Rep. 527.

798. —.]—An affidavit in support of a motion for setting aside an attachment against the sheriff, may be intitled *R. v. Sheriff of Middlesex*, without naming the cause in which the attachment has been obtained.—*R. v. MIDDLESEX (SHERIFF)* (1826), 5 B. & C. 389; 108 E. R. 145; *sub nom. R. v. MIDDLESEX (SHERIFF), Re FENNING v. HOLLYOAK*, 8 Dow. & Ry. K. B. 149.

799. —.]—An affidavit showing cause against a rule for setting aside an attachment against the late sheriff, for not bringing in the body, should be intitled, not in the original cause, but in that of *R. v. late sheriff*, in a certain cause (the original one).—*R. v. MIDDLESEX (LATE SHERIFF), Re WARREN v. DE BURGH* (1838), 8 L. J. C. P. 39.

800. — Variance between parties to action & order—Action by wife as administratrix together

PART VI. SECT. 5, SUB-SECT. 6.—F.

e. Amendment of notice.]—A motion to commit, wrong in form, may be amended.—*LANE v. HANNAH* (1861), 1 W. & W. 66.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 7.—A.

791 i. When dispensed with.]—A party to a suit may move to commit for contempt, although no affidavit is filed by him or on his behalf to the effect that the alleged contempt may prejudice him in his suit.—*STODDART v. PRENTICE* (1898), 6 B. C. R. 308.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 7.—B.

g. Where several partners are

plaintiffs—Affidavit by one sufficient.]—Where several partners are plffs., an affidavit for attachment made by one is sufficient.—*GOLDING v. WATERHOUSE* (1876), 3 Pug. 313.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 7.—C.

794 i. How intitled.]—A *certiorari* having been issued & not obeyed a rule nisi for an attachment was granted; the affidavits on which the rule was granted were intitled in the cause.—*Held*: the affidavits were rightly intitled.—*Re CLYDE COAL & MINING CO.* (1870), 8 N. S. R. 56.—**CAN.**

794 ii. —.]—A rule nisi for attach-

ment for contempt of ct. will be discharged, if the affidavit in support be headed "In re, etc." where there is no such matter depending in ct.—*Re LOSS* (1876), 2 R. & C. 596.—**CAN.**

794 iii. —.]—An affidavit to ground a motion for an attachment must be intitled the same as the rule.—*R. v. TUAM UNION GUARDIANS* (1846), 9 L. R. 324.—**IR.**

794 iv. —.]—An affidavit in support of an application to commit need not be intitled in any cause.—*R. v. O'DOHERTY* (1848), 5 Cox, C. C. 348.—**IR.**

with husband.]—Where a wife sued as administratrix, together with her husband, and the title of an order to tax the attorney's bill took no notice of the husband, a rule *nisi* for an attachment for non-payment of a sum found due by the master's *allocatur* was granted on an affidavit intitled as in the action & not like the order.—SCHOOLING v. CROUCHMAN (1835), 1 Har. & W. 369.

801. — Variance between affidavit & order.]—By an order expressed to be made in a cause, & in the matter of Trustee Act, 1850 (c. 60), a debt was directed to transfer stock. Upon an affidavit of service of this order, which was intitled in the cause only, a writ of attachment for disobedience was issued, on which debt was in custody. The writ was discharged for irregularity on account of a variance, but the ct. declined to give debt. costs.—MACKENZIE v. MACKENZIE (1852), 5 De G. & Sm. 338; 21 L. J. Ch. 386; 19 L. T. O. S. 28; 64 E. R. 1143.

D. Swearing of.

See, now, R. S. C., Ord. 38, r. 16.

802. Not before agent of prosecutor.]—The ct. will in no case issue an attachment against a party at the suit of another, where the affidavits on which the motion is founded are sworn before the agents of prosecutor.—R. v. WALLACE (1789), 3 Term Rep. 403; 100 E. R. 644.

803. Not before solicitor of prosecutor.]—*Re* GREGG, *Re* PRANCE, No. 688, *ante*.

804. Whether before agent of solicitor of prosecutor.]—*Re* GREGG, *Re* PRANCE, No. 688, *ante*.

E. Contents of.

(a) In General.

805. Must state all facts.]—An affidavit in support of a rule for an attachment should distinctly lay all the facts before the ct.—R. v. WALBROOK OVERSEER (1845), 9 J. P. Jo. 293.

806. Must show who is in contempt.]—Pltf. applied for an order for attachment against defts. for disobeying an order for inspection of documents made a rule of ct. — *Held*: the ct. could not grant an attachment, because it was not shown by the affidavit who was in contempt.—*v. MISSIONARY SOCIETY* (1858), 32 L. T. O. S. 108.

807. Must show grounds for motion.]—TAYLOR v. ROE, No. 710, *ante*.

808. Disobedience to subpoena—Witness called.]—The ct. will not grant an attachment against a witness for disobedience to a subpoena, unless the affidavit state that he was duly called at the trial.—MALCOLM v. RAY (1819), 3 Moore, C. P. 222. *Annotation*:—*Reid*, Dixon v. Lee (1834), 1 Cr. M. & R. 645.

809. — — —.]—*Semble*: The affidavit in support of an attachment for not attending a trial in pursuance of a subpoena, need not show that the witness was called in ct. on it, particularly where it does not appear that he attended the ct. at all.—DIXON v. LEE (1834), 1 Cr. M. & R. 645; 3 Dowl. 259; 5 Tyr. 180; 149 E. R. 1239. *Annotations*:—*Reid*, R. v. Stretch (1835), 4 Dowl. 30; Goff v. Mills (1844), 2 Dowl. & L. 23. *Mentd.* Miller v. Knox (1838), 4 Bing. N. C. 574.

810. — Witness material.]—In order to

obtain an attachment for not obeying a subpoena *ad testificandum* the affidavit must state the party to be a material witness.—TINLEY v. PORTER (1837), 2 M. & W. 822; 5 Dowl. 714; Murp. & H. 213; 6 L. J. Ex. 233; 150 E. R. 990.

811. — Jurisdiction of court.]—It is a fatal objection to a motion for an attachment for disobeying a subpoena, by refusal to give evidence, if the affidavits do not show affirmatively that the ct. before whom the evidence was to be given had jurisdiction.

When the affidavits for an attachment against a rated inhabitant, who attended in obedience to a subpoena before justices inquiring into a pauper's settlement, but declined to give evidence, did not state affirmatively that there was a complaint by the churchwardens or overseers, the rule was discharged, as without such complaint they had no jurisdiction.—R. v. VICKERY (1847), 12 Q. B. 478; 2 New Pract. Cas. 21; 2 New Mag. Cas. 69; 2 New Sess. Cas. 566; 16 L. J. M. C. 69; 8 L. T. O. S. 387; 11 J. P. 260; 11 Jur. 106; 116 E. R. 946.

See, further, EVIDENCE.

812. Disobedience to rule of court—Rule described as "order."]—An attachment cannot be granted for disobedience to a rule of ct. on an affidavit calling it an "order" of ct.—*Re* TURNER (1837), Will. Woll. & Dav. 575.

(b) Service and Production of Orders.

Service of order or judgment.]—See Sub-sect. 3, *ante*.

813. Statement that copy personally served.]—In a motion for a rule *nisi* for an attachment against an attorney for not delivering a bill of costs, the affidavit must swear to personal service of the rule.—ANON. (1813), 2 Chit. 66.

814. — — — & original shown.]—An affidavit to support a rule for an attachment for contempt must state that debt. was served personally with a copy of the rule, & that the original was shown to him at the same time.—R. v. SMITHIES (1789), 3 Term Rep. 351; 100 E. R. 615.

Annotations:—*Reid*, Barnard v. Berger (1804), 1 Bos. & P. N. R. 121. *Mentd.* Levy v. Duncombe (1835), 1 Gale, 60.

815. — — —.]—If the affidavit, upon which a motion for an attachment be founded, merely states that the officer of the sheriff was served with a copy of the rule to bring in the body, but does not add that the original rule was shown to him, the ct. will set aside the attachment.—BARNARD v. BERGER (1804), 1 Bos. & P. N. R. 121; 127 E. R. 404.

816. — — —.]—An affidavit to support a rule for an attachment for not paying money pursuant to the master's *allocatur*, must show that at the time of serving the copy, the original was shown to debt.—REID v. DEER (1826), 7 Dowl. & Ry. K. B. 612.

817. — — —.]—The affidavit on which to obtain an attachment for not obeying a subpoena must state that the original subpoena was shown at the time of serving the copy.—GARDEN v. CRESWELL (1837), 2 M. & W. 319; 5 Dowl. 461;

PART VI. SECT. 5, SUB-SECT. 7.—D.

h. Before attorney who issues writ.]—Where an attachment issues with the writ in the cause the affidavit may be sworn before the attorney who issues the writ.—DAVIDSON v. O'CONNELL (1876), 3 Pug. 684.—CAN.

PART VI. SECT. 5, SUB-SECT. 7.—E. (a).

805 i. Must state all facts.]—MASECAR

v. CHAMBERS (1847), 4 U. C. R. 171.—CAN.

805 ii. — — —.]—GOLDING v. WATERHOUSE (1876), 3 Pug. 313.—CAN.

807 i. Must show grounds for motion—Defendant about to abscond.]—JENKINS v. MCFEE (1875), 3 Pug. 41.—CAN.

807 ii. — — —.]—MCALLUM v. PERKINS (1875), 3 Pug. 185.—CAN.

PART VI. SECT. 5, SUB-SECT. 7.—E. (b).

813 i. Statement that copy personally served.]—An attachment for not obeying an order of the ct. will not be granted, unless there be an affidavit of personal service of the order on the person sought to be attached.—MONAGHAN v. KIRWAN (1838), 1 Craw. & D. Abr. C. 208.—IR.

Sect. 5.—Evidence and procedure: Sub-sect. 7, E. (b) & (c), F. (a), (b), (c), (d) & (e), G. & H.; sub-sects. 8 & 9.]

MURP. & H. 44; 6 L. J. Ex. 84; 1 Jur. 56; 150 E. R. 778.

*Annotation:—***Reid. Smith v. Truscott** (1843), 6 Man. & G. 267.

818. ———.]—It is a good answer to a rule for an attachment, for not obeying a *subpœna*, that the affidavit on which the rule is obtained does not state that the original *subpœna* was shown to the witness at the time of the service.—**SMITH v. TRUSCOTT** (1843), 6 Man. & G. 267; 1 Dow. & L. 530; 6 Scott, N. R. 808; 12 L. J. C. P. 336; 1 L. T. O. S. 314; 131 E. R. 804.

819. ———.]—**THOMAS v. GWYNNE, THOMAS v. THOMAS**, No. 342, *ante*.

820. ———.]—**Must be precise.**—An affidavit that deft. has been served with a true copy of a *subpœna*, is too loose & general to support an attachment for want of appearance.—**HINCHLIFFE v. GRACIE & YOUNGER** (1825), McCle. & Yo. 277; 148 E. R. 417.

821. ———.]—**Words "personal service" need not be used.**—On a motion for an attachment against an attorney, for disobeying a rule of ct., it is sufficient if it can be collected from the affidavit of service, that such rule has been personally served; it is not necessary that the words "personal service" should be used in the affidavit.—**SHORT v. SMITH** (1840), 1 Man. & G. 211; 8 Dowl. 581; 1 Scott, N. R. 153; 133 E. R. 309.

As to personal service of order or judgment, *see* Sub-sect. 3, A. & B., *ante*.

(c) *Demand for Compliance and Indorsement on Orders.*

822. Demand by party entitled—Or someone authorised by power of attorney.—**DOE d. HICKMAN v. HICKMAN**, No. 686, *ante*.

823. ———.]—**Affidavit showing demand unsuccessful—Not expressly negating payment.**—**Ex p. SIMONS**, No. 431, *ante*.

824. Demand made in writing—To plaintiff's attorney—Order under Common Law Procedure Act, 1850 (c. 76), s. 7.—In applying for a rule for an attachment against a pltf.'s attorney for not obeying a judge's order made under sect. 7 of the above Act, the affidavits must show that, before the order was obtained, a demand in writing had been made upon pltf.'s attorney, requiring him to declare whether the writ was issued by his authority.—**BROWN v. WILLIAMS** (1863), 1 New Rep. 260; 7 L. T. 622.

As to demand for compliance, *see* Sub-sect. 4, *ante*.

825. Indorsement of warning on order—On application for attachment.—The copy of the affidavit to be used in support of a motion for attachment, which by R. S. C., Ord. 52, r. 4, is required to be served with the notice of motion, must contain a statement that the order alleged to have been disobeyed when served was duly indorsed with the memorandum pointing out the consequence of neglecting to obey it, as required by R. S. C., Ord. 41, r. 5, & if such statement is omitted the service is insufficient.—**STOCKTON FOOTBALL CO. v. GASTON**, [1895] 1 Q. B. 453; 64 L. J. Q. B. 228; 72 L. T. 490; 15 R. 182, D. C. *Annotation:—***Dist. West Ham Corp. v. Cunningham & King** (1906), 50 Sol. Jo. 696.

826. ———.]—**On application for committal.**—**WEST HAM CORPN. v. CUNNINGHAM & KING** (1906), 50 Sol. Jo. 696.

As to indorsement of order, *see* Sub-sect. 4, C., *ante*.

F. Service of Affidavit with Notice of Motion.

(a) *Necessity for.*

In respect of what motions, *see* Sub-sect. 7, F. (b), *post*.

See R. S. C., Ord. 52, r. 4.

Notice of motion generally, *see* Sub-sect. 6, *ante*.

827. General rule.—**PETTY v. DANIEL**, No. 716, *ante*.

828. ———.]—The affidavits intended to be used by appt., upon a motion for attachment, must be served at the same time as the notice of motion.—**EVANS v. EVANS** (1802), 67 L. T. 719; 1 R. 468.

829. ———.]—**TAYLOR v. ROE**, No. 710, *ante*.

830. Waiver of—Within discretion of court.—**PETTY v. DANIEL**, No. 716, *ante*.

831. ———.]—**Whether by appearance.**—**TRFHERNE v. DALE**, No. 677, *ante*.

832. ———.]—**TAYLOR v. ROE**, No. 710, *ante*.

833. Adjournment to answer—Effect of.—**RENDELL v. GRUNDY**, No. 869, *post*.

(b) *In respect of What Motions.*

834. Application to renew attachment.—**TAYLOR v. ROE**, No. 710, *ante*.

835. Whether motion for committal.—R. S. C., Ord. 52, r. 4 applies to a motion for attachment for disobedience to an order for discovery & for answers to interrogatories as well as to a motion for attachment under the common law practice under a writ of attachment.

A copy of the affidavit in support of such a motion was not served with the notice of motion:—**Held**: (1) the motion was irregular; (2) it would be ordered to stand over to await the result of a summons by deft. for an extension of time.—**LITCHFIELD v. JONES** (1883), 25 Ch. D. 64; 32 W. R. 288.

*Annotations:—***As to (1) Consd. Taylor, Plinston v. Plinston**, [1911] 2 Ch. 605. **Generally, Mendt. United Telephone Co. v. Dale** (1884), 50 L. T. 85.

836. ———.]—R. S. C., Ord. 52, r. 4, does not apply to a motion to commit, & consequently upon a motion to commit, a copy of the affidavit upon which the motion is founded need not be served with the notice of motion.—**TAYLOR, PLINSTON BROTHERS & CO., LTD. v. PLINSTON**, [1911] 2 Ch. 605; 81 L. J. Ch. 34; 105 L. T. 615; 28 T. L. R. 11; 56 Sol. Jo. 33, C. A.

837. Motion for sequestration.—**SELOUS v. CROYDON RURAL SANITARY AUTHORITY**, No. 680, *ante*.

(c) *What Affidavits served.*

See R. S. C., Ord. 52, r. 4.

838. Whether affidavits relating to procedure—Or to new facts.—**Re WHITHAM, WHITHAM v. WHITHAM**, [1885] W. N. 176.

*Annotation:—***N.F. Re Lysaght, Blythe v. Baumgartner**, [1887] W. N. 23.

839. ———.]—**As to service of order.**—**SCHIRGES v. SCHIRGES**, [1886] W. N. 85.

*Annotation:—***N.F. Re Lysaght, Blythe v. Baumgartner**, [1887] W. N. 23.

840. ———.]—**Re LYSAGHT, BLYTHE v. BAUMGARTNER**, [1887] W. N. 23.

*Annotations:—***Consd. Re A Solicitor**, [1893] W. N. 188. **Fold. Re Dunning, Sturgeon v. Lawrence** (1894), 63 L. J. Ch. 784.

PART VI. SECT. 5, SUB-SECT. 7.—

F. (a).

827 i. General rule.—Affidavits in

support of a motion for an order for attachment for contempt must be served upon deft. with the notice of

motion.—**R. v. COOK, Re DENNIS & MCCURDY** (1914), 14 E. L. R. 123; 15 D. L. R. 601.—**CAN.**

841. ———.]—*Re A SOLICITOR*, [1893] W. N. 188.
Annotation:—*Re*ld. *Taylor Plinston v. Plinston* (1911), 105 L. T. 815.

842. ———.]—Deft. had disobeyed an order to pay money into ct., & a notice of motion for leave to issue a writ of attachment was served upon him, but no copy of the affidavit stating service of the order was served, though one had been filed:—*Held*: deft. on such a motion was entitled to take advantage of technicalities, & as the rules had not been complied with there would be no order on the motion.—*Re DUNNING, STURGEON v. LAWRENCE* (1894), 63 L. J. Ch. 784; 71 L. T. 57; 8 R. 756.

Annotations:—*Re*ld. *Hall v. Trigg*, [1897] 2 Ch. 219; *Taylor Plinston v. Plinston* (1911), 105 L. T. 815.

843. ———.]—*HALL & Co. v. TRIGG*, No. 508, *ante*.

844. ———.]—*As to re-service of order*.—*BUCKLEY v. CAMP* (1897), 41 Sol. Jo. 737.

(d) *Time and Place of Service.*

845. *Time for service—What is sufficient—Two clear days before hearing.*—*HAMPDEN v. WALLIS*, No. 674, *ante*.

846. ———.]—*Not day before hearing.*—*PLANT v. NEVITT* (1886), 30 Sol. Jo. 704.

847. *Place for service—At address for service—When not personally served.*—*PETTY v. DANIEL*, No. 716, *ante*.

(e) *Service of Copies of Exhibits.*

848. *Whether necessary.*—*ROSSENBAM v. BELSON* (1901), 45 Sol. Jo. 576.

Annotation:—*Consd.* *Carter v. Roberts*, [1903] 2 Ch. 312.

849. ———.]—*CARTER v. ROBERTS*, No. 484, *ante*.

G. Filing of.

850. *Before return.*—Though the affidavit on which an attachment is founded be not filed at the time of issuing the attachment, if it be filed before the return, it will not be irregular.—*READ v. WARD* (1740), Dick. 76; 21 E. R. 196.

Annotation:—*Re*ld. *Broomhead v. Smith* (1803), 8 Ves. 357.

851. *Before notice of motion.*—An affidavit of non-payment of taxed costs & alimony to the person to whom they are ordered to be paid cannot be read on a motion for an attachment if filed subsequently to the notice of motion.—*SYMONS v. SYMONS & PIKE* (1861), 30 L. J. P. M. & A. 215.

H. Other Cases.

852. *Misdescription of person making—Married woman described as widow.*—The ct. set aside an attachment against an attorney for not paying over certain moneys received in his professional character, where the party obtaining it had described herself in her affidavit as a widow of the name of A. C., whereas she was at that time a

married woman of the name of A. H.; although it did not appear that the false name & description were used for any fraudulent purpose.—*R. v. CARTTAR* (1850), 1 L. M. & P. 386; 19 L. J. Q. B. 422; 15 Jur. 176.

853. *Right to read affidavit—Filed in former application involving same question.*—A party showing cause against a rule nisi for an attachment has a right to read an affidavit of his filed in ct., which was made in support of a former application for a rule involving the same question, & of which the other side took an office copy.—*RYAN v. SMITH* (1841), 9 M. & W. 223; 11 L. J. Ex. 77; 152 E. R. 95.

Annotation:—*Re*ld. *R. v. Missen* (1842), 11 L. J. Q. B. 189.

854. *Right of respondent to see & answer affidavit—Before read in court.*—On a motion to commit, in Ch.:—*Held*: resp. was entitled to see & answer an affidavit in reply before it was read on the hearing of the motion.—*DODGE v. BROWN* (1879), 24 Sol. Jo. 108.

SUB-SECT. 8.—PROOF OF CONTEMPT.

855. *By one witness.*—*SANDS v. KNIGHTON* (1038), Toth. 41; 21 E. R. 118.

856. ———.]—*NORTH v. WIGGINS* (1737), 2 Stra. 1068; 93 E. R. 1037.

857. ———.]—*ANON.* (1715), 3 Atk 219; 26 E. R. 928, L. C.

Annotation:—*Consd.* *Blackwell v. Tatlow* (1833), Coop. temp. Brough. 186.

858. ———.]—*Ex p. CLARKE*, No. 882, *post*.

859. *By oath of plaintiff.*—*NURSE v. GUILLEM* (1660), Freem. Ch. 132; 3 Rep. Ch. 39; 2 Eq. Cas. Abr. 413, pl. 1; 22 E. R. 1108.

860. *Denial on oath by defendant.*—*R. v. SIMS* (1701), 12 Mod. Rep. 511; 88 E. R. 1484.

861. ———.]—*R. v. ACKWORTH* (1722), 8 Mod. Rep. 81; 88 E. R. 64.

862. ———.]—*Right to examine witness in rebuttal—in cases of great contempt.*—*WILKINS v. EDSON* (1727), Bunb. 244; 115 E. R. 661.

863. ———.]—*ANON.* (1730), Mos. 312; 25 E. R. 412, L. C.

864. ———.]—*R. v. VAUGHAN* (1780), 2 Doug. K. B. 516; 99 E. R. 329.

865. ———.]—*Story Incredible.*—*Re CROSSLEY* (1796), 6 Term Rep. 701; 101 E. R. 780.

Report of Master of Crown Office—Conclusive.—*See Part I., ante*.

Discharge from custody.—*See Sect. 10, post*.

SUB-SECT. 9.—IRREGULARITIES IN PROCEDURE.

See R. S. C., Ord. 70, r. 1.

866. *Power of court to condone.*—*PETTY v. DANIEL*, No. 716, *ante*.

PART VI. SECT. 5, SUB-SECT. 7.—*F. (a).*

848 i. *Whether necessary.*—A copy of an affidavit intended to be used in support of a motion to commit for contempt is not required to be served therewith.—*TAYLOR, PLINSTON BROTHERS & Co., LTD. v. PLINSTON* (1912), 46 L. L. T. Jo. 6.—*IR.*

PART VI. SECT. 5, SUB-SECT. 8.

855 i. *By one witness—Denied by defendant.*—Where breach of an injunction was sworn to by a single deponent, & was denied by deft., & there was no corroborative evidence, the ct. refused a motion to commit.—*STEWART v. RICHARDSON* (1870), 17 R. 150.—*CAN.*

860 i. *Denial on oath by defendant.*—The ct. refused to commit for breach

of an injunction, where deft. made an affidavit of compliance with the writ.—*CAMPBELL v. GORHAM* (1851), 2 Gr. 403.—*CAN.*

k. *Onus of proof.*—Where there is no order of ct. in existence at the time of an alleged contempt, there is an onus on the part of appt. for committal to establish deft.'s contempt.—*YAMOMOTO v. ATHERSACH* (1919), W. L. D. 105.—*S. AF.*

l. *Proof must be conclusive.*—*Re SCAIFE* (1896), 5 B. C. R. 153.—*CAN.*

m. ———.]—Unless the contempt can be proved beyond all reasonable doubt, the ct. will not commit deft.—*SNOWBALL CO. & MCLAREN v. SULLIVAN & TINGLEY* (1913), 13 E. L. R. 349; 14 D. L. R. 528.—*CAN.*

n. ———.]—No person can be punished for criminal contempt unless the offence be proved by legal evidence.—*LEGAL REMEMBRANCE v. MATILAL GHOSK* (1913), 1 L. L. R. 41 Cal. 173.—*IND.*

o. ———.]—*Re CAMPBELL*, Mac. 34.—*N.Z.*

p. *Sufficiency of proof.*—A trial judge had his attention directed to a letter bearing the initials & surname of deft. in an action then pending before the ct., which appeared in a newspaper; the letter was in the opinion of the judge a contempt of ct.:—*Held*: there was sufficient *prima facie* evidence of the identity of the writer of the letter with deft. to warrant the ct. in punishing him for contempt, without any affidavit or further proof.—*Re ISAACS*, Mac. 34.—*N.Z.*

Sect. 5.—Evidence and procedure: Sub-sect. 9.

Sect. 6: Sub-sects. 1, 2, 3, 4 & 5, A.]

867. When court will condone—Liberty of subject involved.]—TAYLOR v. ROE, No. 710, *ante*.

868. ——— Failure to transmit lodgment schedule.]—Re JAMES, JAMES v. GRIFFITHS (1899), 43 Sol. Jo. 736.

869. ——— Defendant not affected adversely by non-compliance.]—Copies of the affidavits on which an application for an attachment was made in chambers were not served on deft. The objection being taken, the judge adjourned the case to give deft. an opportunity of answering them. On the further hearing deft.'s solr. admitted that deft. could not answer them:—*Held*: assuming that R. S. C., Ord. 42, r. 4 applied, & that copies of the affidavits should have been served, yet deft., having had the equivalent of the advantages intended to be conferred by the rule, was not entitled to insist on the irregularity.—RENDELL v. GRUNDY, [1895] 1 Q. B. 16; 64 L. J. Q. B. 135; 71 L. T. 564; 43 W. R. 50; 39 Sol. Jo. 26; 14 R. 19, C. A.

See, also, Nos. 674, 846, *ante*.

Amendment of notice of motion.]—*See* Sub-sect. 6, F., *ante*.

SECT. 6.—ORDER FOR ATTACHMENT OR COMMITTAL.

SUB-SECT. 1.—WHEN ABSOLUTE IN FIRST INSTANCE.

Criminal contempt generally, *see* Part IV., *ante*.

870. Contempt in face of court.]—*Ex p.* FERNANDEZ, No. 894, *post*.

871. ———.]—When a judge, in the legitimate exercise of his jurisdiction, is defiantly disobeyed, he may commit the offender instantly to prison for contempt of ct.—WATT v. LIGERTWOOD (1874), L. R. 2 Sc. & Div. 361, H. L.

872. ———.]—ANON. (1923), 58 L. Jo. 166.

873. ——— Or libellous reflection on proceedings of court—Court not sitting.]—Re CRAWFORD, No. 162, *ante*.

Generally.]—*See* Part IV., Sect. 2, *ante*.

874. Obstruction of sheriff—Rescous.]—On a rescous returned, an attachment issues without motion.—BRIDGER v. COLEBY (1736), Cooke, Pr. Cas. 126; 125 E. R. 1000.

875. ———.]—The ct. will, in the first instance, grant an attachment against persons named in the sheriff's return as being guilty of a rescue.—BURRARD v. TAYLOR (1828), 6 L. J. O. S. K. B. 324.

876. Attachment at suit of Crown—Disobedience to order for payment of legacy duty—Service of order.]—The ct. will grant a rule absolute in the first instance for an attachment at the suit of the

Crown against a person having unpaid legacy duty in his hands, where a rule absolute to pay it has been served upon him & has not been obeyed, & no cause has been shown.—*Re* EVANS (1865), 3 H. & C. 562; 5 New Rep. 336; 11 L. T. 717; 11 Jur. N. S. 182; 13 W. R. 350; 159 E. R. 651; *sub nom.* *Re* EATON, 34 L. J. Ex. 87.

877. Speaking disrespectfully of court or judges.]—PHILLIPS v. HEDGES, No. 154, *ante*.

878. ———.]—R. v. JERMY, No. 157, *ante*.

879. ———.]—R. v. KENDRICK, No. 158, *ante*.

880. Disobedience to order of court.]—A rule for an attachment for disobeying an order of the ct. is absolute in the first instance.—GARNER v. BROWN (1838), 2 Jur. 82.

881. ——— Non-delivery of possession.]—Attachment absolute in the first instance for non-delivery of possession pursuant to a rule of ct. DAVIES d. POVEY v. DOE (1773), 2 Wm. Bl. 892; 96 E. R. 325.

882. Against person not party in the cause.]—An *ex p.* order of commitment for a contempt is not irregular, because it has been granted absolutely in the first instance, although the person guilty of the contempt is not a party in the cause.

Qu.: whether the ct. will make such order upon the testimony of a simple witness.—*Ex p.* CLARKE (1830), 1 Russ. & M. 563; 39 E. R. 216, L. C.

Annotation:—*Re*ld. Blackwell v. Tatlow (1833), 2 My. & K. 321.

SUB-SECT. 2.—BY WHOM MADE.

See R. S. C., Ord. 36, rr. 51, 52A, 55c, Ord. 54, r. 12A; Bankruptcy Act, 1883 (c. 52), s. 99.

Jurisdiction of courts to punish, *see* Part III., *ante*.

How application for order made—Whether by summons or motion.]—*See* Sect. 5, sub-sect. 5, B., *ante*.

SUB-SECT. 3.—FROM WHAT TIME EFFECTIVE.

883. Day of issue.]—A motion for time to put in an answer, made on the same day an attachment is sealed, is irregular, the attachment being considered as sealed the first moment of the day on which it issues.—STEPHENS v. NEALE (1816), 1 Madd. 550; 56 E. R. 202.

Annotation:—*Consd.* Petty v. Lonsdale (1839), 4 My. & Cr. 545.

884. ———.]—Where the time for answering has expired, & an attachment is duly taken out, deft. cannot demur; & where the demurrer is filed on the same day on which the attachment issues, the latter has the priority, without regard to hours.—TAYLOR v. SHEPPARD (1835), 1 Y. & C. Ex. 94; 4 L. J. Ex. Eq. 7; 100 E. R. 39.

PART VI. SECT. 6, SUB-SECT. 1.

870 i. Contempt in face of court.]—ARMSTRONG v. McCaffrey (1869), 1 Han. 517.—CAN.

870 ii. ———.]—MITCHELL v. SMYTH, [1894] 2 I. R. 351.—IR.

q. Obstruction of coroner.]—ANON. (1831), 4 Ir. L. Rec. 1st Ser. 186.—IR.

r. Interference with receiver.]—THOMAS v. THOMAS (1842), 11 L. & K. 621.—IR.

880 i. Disobedience to order of court—Not executing deed.]—BRENNAN v. CARROLL (1844), 7 I. Eq. R. 196.—IR.

s. Non-payment of alimony—Where periods for payment specified.]—DALY v. DALY (1886), 17 L. R. Ir. 372.—IR.

t. Where party has had notice.]—An absolute order for an attachment will be granted in the first instance, where the party has had notice.—WALCOT v. SMITH (1838), 6 Ir. L. Rec. N. S. 375.—IR.

PART VI. SECT. 6, SUB-SECT. 2.

a. Court of first instance may punish for contempt of order of Court of Appeal reversing order of court of first instance.]—Defts. were restrained by M.R. from proceeding with the erection & completion of a building which plff. alleged obstructed his light. Plff. appealed from this order on the ground that it did not include a mandatory injunction commanding defts. to pull down the building. The Ct. of Appeal discharged the order of M.R., &

ordered defts. to have the building pulled down. Defts. disobeyed this order, & plff. thereupon applied to M.R. for a writ of attachment for contempt of ct. to issue against them. M.R. refused the application. On appeal:—*Held*: M.R. had jurisdiction to make the order sought for.—FORTESCUE v. MCKROWN, [1914] 1 I. R. 32.—IR.

PART VI. SECT. 6, SUB-SECT. 3.

883 i. Day of issue.]—A solr. at a trial was committed to gaol by the judge for contempt of ct., the warrant of committal being dated:—*Held*: the time of the imprisonment should be computed from the date.—*Re* RFA (1878), 2 L. R. Ir. 429.—IR.

SUB-SECT. 4.—FORMAL REQUISITES OF ORDER.

885. Whether writ necessary—Order for committal—Of Court of Chancery.]—An order of the Ct. of Ch. that a party should be committed is not a sufficient authority to imprison him, without a writ awarded out of Ch. for that purpose.—*FURLONG v. BRAY* (1670), 2 Saund. 182; 1 Mod. Rep. 272; 2 Keb. 711; 85 E. R. 947.

886. Entry in registrar's book—Before attachment issued.]—An attachment must be entered in the registrar's book before it is issued.—*SMITH v. THOMPSON* (1819), 4 Madd. 179; 56 E. R. 673.

See, now, R. S. C., Ord. 55, r. 74, Ord. 62, r. 2.

887. Sealing—Order for committal—Seal of court necessary.]—(1) In an order of committal for contempt, it is not necessary, although it is more correct, that there should be a distinct adjudication that a contempt has been committed.

(2) In an order of committal for contempt it is not usual to direct the costs of the application to be paid, but the ct. has jurisdiction to do so if it is thought desirable. But the party in contempt is not liable to the payment of charges & expenses which are not included in the term "costs."

(3) An order of committal for contempt must be under the seal of the ct., & if it is only signed by the judge it will be invalid.—*Ex p. VAN SANDAU* (1846), 1 Ph. 605; 41 E. R. 763; *sub nom. Re MARTIN, Ex p. VAN SANDAU*, De G. 303; 15 L. J. Bery. 13; 7 L. T. O. S. 133, L. C.

Annotation:—As to (1) Consd. Howard v. Gosset, Gosset v. Howard (1847), 6 State Tr. N. S. 319.

888. — Attachment — Not before party in contempt.]—An attachment sealed before, though not executed till after, a party is in contempt is irregular.—*FROWD v. LAWRENCE* (1820), 1 Jac. & W. 655; 37 E. R. 518, L. C.

Annotations:—Mentd. Ex p. Clarke (1830), 1 Russ. & M. 563; *Ex p. Helsby* (1832), Mont. & B. 79; *Aston v. Heron* (1834), 2 My. & K. 390; *Re Chambers, Ex p. Davy* (1834), 3 L. J. Bery. 57; *Re Martin, Ex p. Turner & Hensman* (1844), 3 L. T. O. S. 127.

889. — After requisite affidavit filed.]—An attachment is irregular if it is sealed & delivered out by the sealer before, though it is not parted with till after, the requisite affidavit is filed.—*GARDNER v. ROWE* (1828), 4 Russ. 578; 6 L. J. O. S. Ch. 174; 38 E. R. 923, L. C.

890. Signing—Initials of judge instead of signature.]—The return to a writ of *habeas corpus* stated that the order of commitment was made by the Vice-Chancellor of England:—*Held*: the ct. must take it to have been so made, although it did not purport to be signed by the Vice-Chancellor, but had the initials "C.C." [*i.e.* Cottenham, Chancellor] in the margin of it.—*Re DIMES* (1850), 14 Q. B. 554; 4 New Mag. Cas. 69; 19 L. J. Q. B. 158; 14 L. T. O. S. 372; 14 J. P. 54; 14 Jur. 198; 117 E. R. 214; *subsequent proceedings*, 3 Mac. & G. 4, L. C.

891. Must be returnable immediately—If respondent residing within twenty miles of London.]—A writ of attachment against a person residing within twenty miles of London is void *ab initio* if made returnable on a day certain instead of immediately.—*Re BROWN* (1868), 16 W. R. 962.

892. Omission to indorse amount of costs on writ—Mere irregularity—Waived by delay in objection.]—The omission to indorse on a writ of attachment issued for non-payment of costs, the amount of the costs, is a mere irregularity, which will be waived by delay in applying to the ct. to

set aside the writ.—*PEARSON v. PEARSON* (1802), 2 Sw. & Tr. 546; 31 L. J. P. M. & A. 102; 5 L. T. 772; 8 Jur. N. S. 158; 10 W. R. 410; 184 E. R. 1109.

893. Omission to state that one charge not proved—Immaterial.]—The Law Society obtained a rule *nisi* for attachment for contempt of ct. against W., a solr. A Div. Ct. found that all but one of the cases with which W. was charged were proved, but in drawing up the order the fact that one charge was not proved was not mentioned in it:—*Held*: the omission, not being material, was not a ground for setting aside the writ of attachment.—*WARD v. LAW SOCIETY* (1921), 65 Sol. Jo. 791.

SUB-SECT. 5.—CONTENTS OF ORDER

A. Statement and Adjudication of Offence.

894. General rule—Orders of superior courts.]—

(1) Where a judge of assize committed a witness for contempt of ct. in refusing to answer a question, & the warrant was made out in general terms:—*Held*: the ct. of assize being a "superior ct." the judge had jurisdiction to commit, & was not bound to set out at length in his warrant the cause of commitment, his decision not being subject to review by the ct. above.

(2) I need only cite 4 Bl. Com. 281, 283 to show that a witness refusing to be examined commits an offence for which as being a contempt in the face of the ct. he may be "instantly apprehended & impressed at the discretion of the judges without further proof or examination" (WILLES, J.).

(3) I apprehend that a commitment for a time certain is a correct, if not the only correct, course (WILLES, J.).—*Ex p. FERNANDEZ* (1861), 10 C. B. N. S. 3; 30 L. J. C. P. 321; 4 L. T. 321; 7 Jur. N. S. 571; 9 W. R. 832; 142 E. R. 349.

Annotations:—As to (1) Consd. Dale's case, Enraght's case (1881), 6 Q. B. D. 376. *Refd. R. v. Maidenhead Corpn.* (1882), 8 Q. B. D. 339; *R. v. Central Criminal Court JJ.* (1883), 11 Q. B. D. 479; *R. v. Parke* (1903), 89 L. T. 439; *Gordon v. Gordon*, [1904] P. 163. *As to (2) Refd. Re Davies* (1888), 21 Q. B. D. 236; *Scott v. Scott*, [1912] P. 241. *As to (3) Refd. Re Davies* (1888), 21 Q. B. D. 236.

895. Statement of offence—Sufficiency of—Omission to describe nature of insult.]—To a declaration for trespass & false imprisonment against the high bailiff of a county ct. & the governor of the gaol, defts. justified under a warrant under the seal of the county ct. & directed to them, whereby, after reciting that pltf. had wilfully insulted the judge during his sitting, & that thereupon the judge had ordered pltf. to be taken into custody, & detained until the rising of the ct., it "therefore" required defts. to arrest pltf. & imprison him for seven days:—*Held*: (1) the warrant was not bad for uncertainty in specifying the cause of commitment; (2) nor for omitting to describe the nature of the insult; (3) the recital that pltf. had insulted the judge was a sufficient adjudication of the offence.—*LEVY v. MOYLAN* (1850), 10 C. B. 189; 1 L. M. & P. 307; *Rob. L. & W.* 459; *Cox, M. & H.* 398; 19 L. J. C. P. 308; 16 L. T. O. S. 235; 11 J. P. 700; 14 Jur. 983; 138 E. R. 78.

Annotations:—As to (1), (2) & (3) Refd. Rainy v. Sierra Leone JJ. (1853), 8 Moo. P. C. C. 47; *Re Rea* (1878), 14 Cox, C. C. 139.

896. — Warrant in general terms.]—

A general warrant, in which no special cause of

PART VI. SECT. 6, SUB-SECT. 4.

b. Signing & sealing—By clerk of process—Indorse by clerk of Crown—Sufficient.]—*Re ALLEN* (1871), 31 U. C. R. 458.—CAN.

c. — — — — —.]—*R. v. HAWKE* (1888), 28 N. B. R. 400.—CAN.

PART VI. SECT. 6, SUB-SECT. 5.—A.

894 i. General rule—Orders of superior

courts.]—The adjudication of contempt by the judge of a superior ct. may be general, & the particular circumstances need not be set out.—*Re McALEER* (1873), 1 R. 7 C. L. 146.—IR.

Sect. 6.—Order for attachment or committal: Sub-sect. 5, A., B. & C.; sub-sects. 6, 7 & 8.]

commitment is shown, is void.—**BRICE'S CASE** (1640), Cro. Car. 593; 79 E. R. 1109.

897. ————]—Motion for a writ of *habeas corpus* to bring up a bkpt. who had been committed to prison by the bkpt. commr. for not giving satisfactory answers. The objection to the warrant was, that it did not specify which of the answers were unsatisfactory:—**Held**: the warrant referred to all the answers generally as not being satisfactory, & not merely to certain of them, & the rule must be discharged.—**RE BANKRUPT** (1816), 7 L. T. O. S. 117.

898. ————]—Issued by superior court.]—**Ex p. FERNANDEZ**, No. 894, *ante*.

899. ————]—Necessity to specify particular breach—When more than one direction.]—(1) An order was made in an action in a county ct. upon H., as acting manager of a certain partnership fund, to pay into ct. within fourteen days the sum of £65 odd, & to deliver up certain documents. H. did deliver up the documents, but failed to pay in the money, whereupon an order of committal was made out by the county ct. judge, on the ground that H., in his fiduciary position, had been guilty of contempt of ct. by neglecting to obey the previous order. The committal order merely recited the terms of the original order, & did not specify any particular breach:—**Held**: the order was bad for uncertainty, since it did not specify in what particular H. was guilty of contempt so as to enable him to purge such contempt.

(2) The question for us is whether an order for committal or a writ of attachment is the proper form to enforce obedience to an order which is final. One [committal] was enforced by the tipstaff of the ct., & the other by the sheriff. That is all the distinction, & it comes to little, if anything (**WILLS, J.**).—**It. v. LAMBETH COUNTY COURT JUDGE & JONAS** (1887), 36 W. R. 475; 4 T. L. R. 158, D. C.

900. ————]—**HIPKISS v. FELLOWS**, No. 713, *ante*.

901. ————]—In disjunctive.]—A warrant of commitment following substantially the form settled by the judges, stated that plff. had recovered judgment in the county ct.; that deft. appeared to the summons, & neglected to pay; that he was examined touching his estate; that the judge found he had obtained credit under false pretences, & made a transfer of his property, with intent to defraud his creditors; that deft. asked for an adjournment, which was granted; that he did not appear upon the day of the adjournment, & that the judge then ordered him to be committed. The order of commitment, which was brought up, stated the offence in the same way as in the warrant:—**Held**: the order & warrant were not bad for stating the offence in the disjunctive.—**Ex p. PURDY** (1850), 9 C. B. 201;

899 i. Statement of offence—Sufficiency of.—Necessity to specify particular breach.]—The indorsement on a writ of attachment is sufficient if it inform the party what the proceeding against him is for.—**It. v. KNAPP** (1877), 1 P. & B. 238.—**CAN.**

899 ii. ————]—The offence need not be stated in the committal part of the warrant, provided it appear sufficiently on the face of the warrant what the offence was.—**Re REA** (1878), 14 Cox, C. C. 139.—**IR.**

899 iii. ————]—A criminal ct. inflicting a fine for contempt should specifically record its reasons & the facts constituting the contempt with

any statement the offender may make, as well as the finding & sentence.—**Re PANCHANADA TAMBIRAN** (1868), 4 Mad. 229.—**IND.**

904 i. Adjudication—Necessity of—Whether recital of charge sufficient.]—A commitment by a magistrate for contempt, if there be no recorded conviction, should show that the party was convicted of the contempt; stating that he was charged with it, is insufficient.—**MCKENZIE v. MEWBURN** (1843), 6 O. S. 486.—**CAN.**

904 ii. ————]—**Re REIBEN COMMITMENT**, [1919] 1 W. W. R. 648.—**CAN.**

906 i. ————]—Sufficiency of recital of.]—

Cox, M. & H. 339; 19 L. J. C. P. 222; 14 L. T. O. S. 467; 14 Jur. 332; 137 E. R. 869; *sub nom. Ex p. PARDY*, 1 L. M. & P. 118.

902. Adjudication—Necessity of.]—An order of committal for contempt was made without any distinct adjudication that a contempt had been committed.—**FOTHERBY v. PRESTON** (1748), cited in 15 L. J. Bcy. at p. 15, L. C.

Annotation:—**Refd. Ex p. Van Sandau** (1846), 1 Ph. 605.

903. ————]—It was a mistake to assert that an adjudication of a contempt was a necessary part of every committal for a contempt, & that an attachment would be invalid without it. It is not so in the superior cts. of common law nor in the Ct. of Ch. (**PARKE, B.**).—**GOSSET v. HOWARD** (1847), 10 Q. B. 411; 6 State Tr. N. S. 319; 16 L. J. Q. B. 345; 10 L. T. O. S. 51; 11 J. P. 457; 11 Jur. 750; 116 E. R. 158, Ex. Ch.; *reversg. S. C. sub nom. HOWARD v. GOSSET (1845), 10 Q. B. 359. **Annotations**:—**Refd. Fenton v. Hampton** (1858), 11 Moo. P. C. C. 347; **Ex p. Fernandez** (1861), 10 C. B. N. S. 3. **Mentd. Re Crawford** (1849), 13 Q. B. 613; **Ityllis v. R.** (1849), 11 Q. B. 795; **Wagner v. Imbrie** (1851), 20 L. J. Ex. 416; **Wickens v. Goatly** (1851), 11 C. B. 866; **Re Fernandes** (1861), 6 H. & N. 717; **Hodgins v. Poe** (1867), 16 W. R. 224; **Dalo's Case, Enraght's Case** (1881), 6 Q. B. 1). 376; **Bradlaugh v. Erskine** (1883), 47 L. T. 618.*

904. ————]—Recital of adjudication sufficient.]—A commitment for contempt by a court of equity need not adjudicate the contempt; it is enough if it recite such an adjudication.—**Re COBBETT** (1845), 7 Q. B. 187; 115 E. R. 458.

Annotation:—**Refd. Gosset v. Howard** (1845), 10 Q. B. 411.

905. ————]—**Ex p. VAN SANDAU**, No. 887, *ante*.

906. ————]—Sufficiency of recital of.]—**LEVY v. MOYLAN**, No. 895, *ante*.

907. ————]—Wider than original order.]—**GROOME v. FORRESTER** (1816), 5 M. & S. 314; 105 E. R. 1066.

Annotations:—**Consd. Ex p. Leake** (1829), 9 B. & C. 234. **Refd. Griffith v. Harries** (1837), 2 M. & W. 335; **Howard v. Gosset, Gosset v. Howard** (1847), 6 State Tr. N. S. 319. **Mentd. Daniell v. Phillips** (1835), 1 Cr. M. & R. 662; **Douglas v. R.** (1848), 13 Q. B. 74; **Lindsay v. Leigh** (1848), 12 Jur. 286.

B. Duration of Imprisonment.

908. Necessity to fix time certain—"Until discharged by due course of law."]—**YAXLEY'S CASE** (1693), Carth. 291; **Skin. 369**; 90 E. R. 772; *sub nom. YOXLEY'S CASE*, 1 Salk. 351; 91 E. R. 307; *sub nom. R. v. YAXLEY*, Comb. 224; 90 E. R. 443.

Annotations:—**Consd. Groome v. Forrester** (1816), 5 M. & S. 314; **Ex p. Leake** (1829), 9 B. & C. 234. **Refd. Bracy's Case** (1696), 1 Ld. Raym. 99; **Daniell v. Phillips** (1835), 1 Cr. M. & R. 662.

909. ————]—A commitment for a contempt, being a commitment for punishment, must be for a time certain, & consequently a commitment for a contempt till deft. is discharged by due course of law is bad.—**R. v. JAMES** (1822), 5 B. & Ald. 894; 1 Dow. & Ry. K. B. 559; 1 Dow. & Ry. M. C. 131; 106 E. R. 1419.

Annotations:—**Consd. Ex p. Leake** (1829), 9 B. & C. 234; **Re Crawford** (1849), 13 Q. B. 613.

A committal by magistrates stating the cause of committal to be, that prisoner addressed certain disrespectful words to the magistrate on the bench, thereby imputing corrupt motives to that magistrate:—**Held**: bad, for uncertainty, in the particulars of time, place & cause of imprisonment.—**It. v. KELLY** (1841), 2 Jebb. & S. 613; 3 J. L. R. 316.—**IR.**

PART VI. SECT. 6, SUB-SECT. 5.—B.

908 i. Necessity to fix time certain.]—**Re CHATHAM HARVESTER CO. v. CAMPBELL** (1888), 12 P. R. 666.—**CAN.**

908 ii. ————]—**Re REA** (1878), 14 Cox, C. C. 139.—**IR.**

910. — “Until he conform to our authority & be delivered by due course of law.”—Comrs. of Bkpts. required B. to tell all that he knew touching the estate of bkpt. & for not answering they committed him, & the conclusion of the commitment was “until he conform himself to our authority & be thence delivered by due course of law”:—*Held*: the conclusion of the commitment was ill & should have been, till he should submit to be examined touching the premises.—BRACY’S CASE (1696), Comb. 391; 1 Salk. 348; 1 Ld. Raym. 99; 90 E. R. 547; *sub nom.* BRACY v. HARRIS, 5 Mod. Rep. 309.

Annotations:—*Expi.* R. v. Elwell (1727), Sess. Cas. K. B. 104. *Consd.* Groom v. Forrester (1816), 5 M. & S. 314; Howard v. Gosset, Gosset v. Howard (1847), 6 State Tr. N. S. 319. *Refrd.* Miller v. Seare (1777), 2 Wm. Bl. 1141; Daniell v. Phillips (1835), 1 Cr. M. & R. 662. *Mentd.* Wilkins v. Wright (1833), 2 Cr. & M. 191.

911. — “Until he should make satisfactory answers & sign examination.”—A warrant committing a bkpt. for refusing to sign his examination should in its conclusion limit the imprisonment until the thing should be done, for the not doing of which the bkpt. is committed.

Where such a warrant concluded directing his imprisonment until he should make satisfactory answers to such questions as should be put to him, & sign his examination:—*Held*: such warrant was bad.

I think the commitment is bad. I mean that if, in its terms, it would call for a longer imprisonment than is warranted it cannot be maintained (BAGLEY, J.).—*Ex p.* LEAKE (1829), 9 B. & C. 234; 109 E. R. 87; *sub nom.* *Ex p.* LEEK, 7 L. J. O. S. K. B. 128; *previous proceedings, sub nom.* *Re* LEAKE, 3 Y. & J. 46.

Annotation:—*Consd.* Howard v. Gosset, Gosset v. Howard (1847), 6 State Tr. N. S. 319.

912. — “Until further order.”—*Re* CRAWFORD, No. 162, *ante*.

913. —.—*Ex p.* FERNANDEZ, No. 894, *ante*.

914. —.—*Re* DAVIES, No. 98, *ante*.

915. — “During pleasure.”—*Re* LUDLOW CHARITIES, LECHIMERE CHARLTON’S CASE, No. 14, *ante*.

916. — Further Imprisonment till fines paid.]—*Re* BAHAMA ISLANDS, SPECIAL REFERENCE FROM, No. 19, *ante*.

C. Other Matters.

Costs, *see* Sub-sect. 9, *post*.

917. Must specify prison.]—The commitment must specify what gaol the party is sent to.—R. v. SMITH (1732), 2 Stra. 934; 2 Barn. K. B. 133; 93 E. R. 951.

918. Must recite affidavit of service of order sought to be enforced.]—An order for committal for breach of injunction must state the affidavit of service of the injunction, & either the affidavit of service of the notice of motion for committal, or the appearance of counsel for deft. upon the motion.

Such an order had been regularly obtained, but

the registrar, in drawing it up, had omitted these statements:—*Held*: it would be discharged without costs.—STEPHENS v. WORKMAN (1863), 1 New Rep. 563; 8 L. T. 232; 11 W. R. 503.

919. Must recite affidavit of service of notice of motion—Or appearance on motion.]—STEPHENS v. WORKMAN, No. 918, *ante*.

SUB-SECT. 6.—CONDITIONAL ORDERS.

920. Order cannot be conditional—On future default in attendance.]—SHURROCK v. LILLIE, No. 683, *ante*.

921. — On future possible contempt.]—HULBERT & CROWE v. CATHCART, No. 536, *ante*.

922. — On future uncertain event.]—An order directing an attachment or sequestration on future uncertain event, *e.g.* on default of payment within a specified time, is wrong in form.—*Re* LUMLEY, *Ex p.* CATHCART, [1894] 2 Ch. 271; 63 L. J. Ch. 435; 42 W. R. 401; 38 Sol. Jo. 398; 7 R. 179; *sub nom.* *Re* LUMLEY, HOOD BARRS v. CATHCART, 70 L. T. 780, C. A.

Annotation:—*Mentd.* *Re* Deakin, *Ex p.* Cathcart, [1900] 2 Q. B. 478.

923. On making of affidavit of service of notice.]—The ct. will grant a rule for an attachment for non-payment of a sum of money, pursuant to a rule of ct., though there is not an affidavit of the rule having been shown to the party, if that has in fact been done, but will direct that the attachment shall lie in the office until such an affidavit is made.—DAVIES v. SHERLOCK (1839), 2 Will. Woll. & H. 67.

Affidavit of service of notice of motion generally, *see* Sect. 5, sub-sect. 6, *E., ante*.

924. On default in payment of instalment.]—Where a party is called on by rule of ct. to pay a sum of money, the ct. will, on the consent of all parties, make the rule absolute to pay the amount by instalments, with a proviso that if default shall be made in payment of any of them, an attachment shall issue without further application to the ct.—BLADE v. GRAY (1812), 6 Jur. 587.

925. — Terms agreed to between parties.]—BREMNER v. BREMNER & BRETT, No. 493, *ante*.

926. On default in payment of fine—Order for fine & attachment.]—R. v. BOTTOMLEY (1909), *Times*, Jan. 19, D. C.

SUB-SECT. 7.—SECOND ORDER.

See Nos. 961, 977, *post*.

SUB-SECT. 8.—SETTING ASIDE OR SUSPENDING ORDER.

Discharge from custody, *see* Sect. 10, *post*.

Appeals from order of committal, *see* Sect. 9, *post*.

910 i. — Until compliance with order—Or “until discharged by due course of law.”—An order of committal for contempt for disobedience to an order declared that deft. had been adjudged guilty of contempt & ordered deft. to be committed to prison until compliance with the order, or until deft. should be sooner discharged by competent authority, & in due course of law:—*Held*: the order was bad, as it did not declare that the imprisonment should not exceed one year.—*Re* BYRNE (1880), 14 L. T. 115.—IR.

PART VI. SECT. 6, SUB-SECT. 5.—C. d. Must show jurisdiction.]—*Re*

BALTIMORE (1892), 25 N. S. R. 106.—CAN.

e. Must follow terms of order sought to be enforced.]—GRANT v. GRANT (1904), 36 N. S. R. 547.—CAN.

PART VI. SECT. 6, SUB-SECT. 6.

f. Should be served personally.]—Conditional orders for attachments, out of all ocs., should be served personally.—ANON. (1830), 3 Ir. L. Rec. 1st Ser. 289.—IR.

g. When process server obstructed & original writ destroyed.]—When a

process server was obstructed in service of a writ, & the original writ destroyed, the ct. granted a conditional order for an attachment against deft.—JONES v. REYNOLDS (1838), *Craw.* & D. Abr. C. 139; 1 Jebb. & S. 56.—IR.

h. On refusal to execute a conveyance.]—A minor, ordered to execute a conveyance, refused to do so, at the instigation of a parent; the ct. granted a conditional order for attachment against the minor & the parent.—M’CARTNEY v. SIMONTON (1843), 5 Ir. Eq. R. 594.—IR.

Sect. 6.—Order for attachment or committal: Sub-sects. 8 & 9. Sect. 7: Sub-sect. 1.]

927. General rule.]—The ct. will not interfere, to relieve parties, upon the terms of their paying the costs, from process of contempt issued regularly & without any breach of good faith.—*HEATON v. TIPTON* (1826), 1 Russ. 323; 38 E. R. 125.

928. Jurisdiction of court of first instance—To discharge order made by vacation judge.]—*HIPKISS v. FELLOWS*, No. 713, *ante*.

929. To whom application made—Judge making order.]—*THE FEARLESS* (1905), 49 Sol. Jo. 724.

Discharge from custody.]—*See Sect. 10, sub-sect. 3, B., post.*

930. On what grounds—Illness & incapacity of defendant.]—Affidavits of deft.'s illness & incapacity to put in an answer are admissible evidence on which to ground an application to discharge process of contempt.—*BENSON v. VERNON* (1745), 3 Bro. Parl. Cas. 626; 1 E. R. 1539, H. L. *Annotation*:—*Mentd. Kemp v. Squire* (1749), 1 Ves. Sen. 205.

931. —Not delegation of authority by court—Without order or decree.]—Under an order that an account be taken at chambers of the debts of testator, M. claimed to be a creditor for a certain sum, & filed affidavits in support of his claim. Pltf. wished to cross-examine claimant on the affidavits, & served him with a *subpoena* for that purpose. It was objected before the examiner that it was not competent for him to proceed with the examination, as no order had been made by the judge who pronounced the decree. The examiner decided to proceed, but the witness refused to be sworn. Thereupon an order for his attachment was obtained from the ct. On motion to discharge the order for attachment, on the ground that the ct. had, by its decree, delegated its authority to the chief clerk, which

authority could not be transferred to the examiner without an order:—*Held*: the motion must be refused.—*CAST v. POYSEY* (1856), 3 Sm. & G. 369; 26 L. J. Ch. 93; 28 L. T. O. S. 118; 3 Jur. N. S. 38; 65 E. R. 698.

SUB-SECT. 9.—COSTS ON APPLICATION FOR ORDER.

932. Discretion of court to award.]—The costs of an attachment are no longer fixed, but by R. S. C., Ord. 55, r. 1, they are in the discretion of the ct. & should be disposed of at the time of the application for the writ under R. S. C., Ord. 44, r. 2.—*ABUD v. RICHES* (1876), 2 Ch. D. 528; 45 L. J. Ch. 649; 34 L. T. 713; 24 W. R. 637; 3 Char. Pr. Cas. 371.

Annotations:—*Consd. Re Evans, Evans v. Noton* (1893), 68 L. T. 324. *Mentd. Harvey v. Harvey* (1881), 26 Ch. D. 641.

933. When applied for.]—*ABUD v. RICHES*, No. 932, *ante*.

934. May be included in order for committal.]—*Ex p. VAN SANDAU*, No. 887, *ante*.

Contents of order for committal generally, *see Sub-sect. 5, ante*.

935. Whether court will award—Motion to commit—Committal not pressed for.]—*PLATING (O. v. FARQUHARSON*, No. 255, *ante*.

936. Liability of respondent for—Limited to when in contempt.]—A writ of *subpoena* was issued in a non-contentious matter directing R., a solr., to bring into the Probate Registry a script which was stated to be, but which was not in fact, in his possession or control:—*Held*: (1) his non-compliance with the *subpoena* was not, under the circumstances, a contempt; (2) there being no contempt, the ct. had no jurisdiction to order him to pay the costs of an application for an order directing him to attend for examination before

PART VI. SECT. 6, SUB-SECT. 8.

k. On what grounds—Applicant in fault.]—A party who was directed to execute a conveyance had come into town to execute it, although after the proper period. Pltf.'s solr. knowing these facts issued an attachment:—*Held*: it should be set aside.—*MASON v. SEENEY* (1867), 2 Ch. Ch. 220.—*CAN.*

l. —Process entered without court's order.]—Process of attachment entered against a party without the ct.'s order is irregular, & will not be allowed to stand.—*PERSE v. BAYLEY* (1843), 5 L. Eq. R. 586.—*IR.*

m. —Irregularity of attachment not prejudicing defendant.]—Irregularity of an order for attachment is not sufficient to justify its setting aside, where deft. is not prejudiced by it.—*O'SULLIVAN v. O'SULLIVAN* (1880), 19 N. B. R. 396.—*CAN.*

PART VI. SECT. 6, SUB-SECT. 9.

n. General rule—When motion dismissed.]—The usual rule, when a motion for contempt is dismissed, is that resp.'s costs should be paid.—*LEGAL REMEMBRANCE v. MATILAL GHOSE* (1913), 1 L. R. 41 Cal. 173.—*IND.*

o. Whether court will award—Motion to commit—No committal.]—A party neglecting to produce accounts before the master when so required, will be ordered to pay the costs occasioned by his contempt, although no commitment has taken place.—*BERRIE v. MOORE* (1863), 1 Ch. Ch. 107.—*CAN.*

p. —Compliance after notice to commit.]—Where an order is complied with after notice of motion to commit for disobedience of it, the party will be required to pay appt. the costs of the motion.—

MALLOCH v. PLUNKETT (1864), 1 Ch. Ch. 381.—*CAN.*

q. —Where defendants cleared themselves of contempt.]—Where defts. had been brought into ct. upon an attachment, although they cleared themselves upon interrogatories of the imputed contempt, the ct. refused to allow costs against prosecutor, even although he had omitted a fact in his affidavit which might have affected their granting the attachment, & although one of the affidavits upon which the attachment was moved for was not filed early enough for them to answer by a counter affidavit.—*R. v. MCKENZIE* (1823), Tay. 70.—*CAN.*

r. —Defendant ordered to pay where he invited application to commit.]—Although there may not have been such a wilful or contemptuous breach of an injunction as may call for committal, yet, where deft. by his conduct invited the application to commit, he was ordered to pay the costs of the motion.—*HARDIE v. LAVERY* (1887), 5 Man. L. R. 134.—*CAN.*

s. —Motion dismissed with costs.]—*Re NORTH RENFREW PROVINCIAL ELECTION, Re MACDONALD* (1904), 4 O. W. R. 244; 9 O. L. R. 79.—*CAN.*

t. —Attachment granted for unauthorised issue of process.]—An attachment was granted against a deputy clerk of the Crown for having issued serviceable process without authority; & afterwards, on his appearance to answer interrogatories, the ct. ordered him to be dismissed from his office, & to pay the costs of the proceedings.—*R. v. FRASER* (1833), 3 O. S. 247.—*CAN.*

u. —When improper order disobeyed—Failure of motion.]—A party disobeying an injunction was refused

his costs of resisting a motion to commit for contempt, although at the same time the injunction was dissolved upon his application, as granted improperly.—*NOTTER v. SMITH* (1859), 1 Ch. Ch. 21.—*CAN.*

b. —Where plaintiff has also brought action for libel.]—Pltf. moved for an attachment against deft. for contempt, in having, pending the action, published a pamphlet censuring the proceedings & the course of the trial:—*Held*: deft. was guilty of contempt, & pltf. was entitled to the costs of the motion, although he had brought an action against deft. for a libel contained in the same pamphlet.—*CORKERY v. HICKSON* (1876), 1 R. 10 C. L. 174.—*IR.*

936 i. Liability of respondent for.]—The allegations contained in a petition filed in an action commenced by pltf. for the dissolution of his marriage with deft., with comments thereon, were published in a newspaper before the hearing of an action:—*Held*: the publisher of the newspaper had committed a contempt of ct. & he was ordered to pay the costs of the motion for committal.—*BROWNIGG v. SLATER, BROWNIGG v. BROWNIGG*, [1906] SL R. Qd. 9.—*AUS.*

936 ii. —.—*PRENTISS v. BRENNAN* (1850), 1 Gr. 428, 497.—*CAN.*

936 iii. —.—*PATERSON v. KILGOUR* (1865), 3 Macph. (Ct. of Sess.) 1119; 38 Sc. Jur. 5.—*SCOT.*

936 iv. —In addition to fine.]—Resp. had not intended to disrespect the ct. & had acted *bona fide*, but had been guilty of contempt:—*Held*: he must pay a fine of £10 & pay *de bonis propriis* the costs of the proceedings.—*LI KUI YU v. LABOURERS SUPERINTENDENT* (1906), T. S. 181.—*S. AF.*

936 v. —.—*Re COUSINS* (1911), C. P. D. 463.—*S. AF.*

the judge, or of his consequent attendance.—*Re* EMMERSON, RAWLINGS *v.* EMMERSON (1887), 57 L. J. P. 1, C. A.

937. — Order of court reversed on appeal—Breach of undertaking to take no proceedings pending appeal.—Upon appeal the order of the ct. below granting an injunction had been reversed :—*Held* : this did not affect the right of pltf. to the costs of a motion to commit deft. for breach of an undertaking given to take no proceedings pending the appeal.—PENNEL *v.* ROY (1853), 21 L. T. O. S. 41 ; 1 W. R. 271.

938. Party & party—Costs of suit not allowed.—Costs of process of contempt for not answering were not allowed in the taxation of costs of suit as between party & party.—*A.-G. v. CARRINGTON* (LORD) (1813), 6 Beav. 451 ; 49 E. R. 901.

Annotations :—*Mentd.* Malins *v.* Price (1845), 9 Jur. 650 ; *Hardy v. Hull* (1853), 17 Beav. 355 ; *Begbie v. Fenwick* (1871), 24 L. T. 62.

939. Solicitor & client costs—Whether awarded against respondent—Circumstances justifying committal—Committal not pressed for.—STEELE *v.* HUTCHINGS, [1879] W. N. 18.

Annotation :—*Refd.* Marsden *v.* Old Silkstone Collieries (1914), 13 L. G. R. 312.

940. — By way of indemnity to party moving—Instead of committing respondent.—PLATING CO. *v.* FARQUHARSON, No. 255, *ante*.

941. — Intimidation of party & witness.—BROMLOW *v.* PHILLIPS, No. 347, *ante*.

942. — Whether awarded to respondent—Failure of motion.—PLATING CO. *v.* FARQUHARSON, No. 255, *ante*.

943. Recovery of costs—Order made in Chancery Division—Action in King's Bench.—An order was made by a judge in the Ch. Div. that deft. a solr., should pay to pltf. the costs of a motion by pltf. for the attachment of deft. for contempt of ct. in not having delivered to pltf. a bill of costs pursuant to an order for taxation of costs. The costs of the motion having been taxed, pltf. sued deft. in the K. B. Div. to recover the amount thereof :—*Held* : the order for costs was not made in a criminal or quasi-criminal matter & the action was maintainable.—SELDON *v.* WILDE, [1911] 1 K. B. 701 ; 80 L. J. K. B. 282 ; 104 L. T. 194, C. A.

Annotation :—*Refd.* Scott *v.* Scott, [1912] P. 241.

944. Order for payment of costs of contempt—Costs of sequestration included.—An order for payment of the costs of a contempt will include the costs of a sequestration, although the sequestrators have not yet made a return ; & the direction for the taxation of the costs should be absolute, & not dependent upon the fact whether the parties differ about the same.—STEELE *v.* PLOMER (1849), 1 H. & Tw. 149 ; 18 L. J. Ch. 209 ; 13 Jur. 177 ; 47 E. R. 1363, L. C.

Payment of costs on discharge—Whether condition precedent to discharge from custody.—*See* Sect. 10, sub-sect. 6, A., *post*.

SECT. 7.—EXECUTION.

SUB-SECT. 1.—ARREST.

See, generally, EXECUTION ; SHERIFFS & BAILIFFS.

Discharge from custody, *see* Sect. 10, *post*.

939 i. Solicitor & client costs—Awarded against respondent—Though fine & imprisonment imposed as penalty for contempt.—Though fine & imprisonment are both imposed as a penalty for contempt of ct., the ct. may order payment of prosecutor's costs as between attorney & client.—*R. v. ELLIS* (1893), 32 N. B. R. 561.—CAN.

c. Respondent not guilty of wilful impropriety must pay costs.—*Held* : the article was a contempt of ct., but having been written in a political controversy & in ignorance of the issue of the writ, resp. had not been guilty of wilful impropriety, but must pay costs of application.—GRAY *v.* DAVIES BROTHERS, LTD. (1915), 11 Tas. L. R. 48.—AUS.

945. On Sunday—Attachment for rescue.—A person may be arrested on a Sunday on an attachment for a rescue.—ANON. (1744), Willes, 459 ; 125 E. R. 1267.

Annotations :—*Refd.* Burdett *v.* Abbot (1811), 14 East, 1 ; *Harvey v. Harvey* (1884), 26 Ch. D. 641.

946. — Disobedience to order.—Petitioner was arrested on a Sunday under a warrant of the ct. for a contempt in disobeying an order, & now prayed to be discharged, insisting that his arrest & commitment was illegal, being contrary to the Sunday Observance Act, 1677 (c. 7), s. 6 :—*Held* : it was a lawful arrest, though on a Sunday.—*Ex p.* WHITCHURCH (1749), 1 Atk. 55 ; 26 E. R. 37, L. C.

Annotation :—*Consd.* *Re Dicus* (1831), 9 L. J. O. S. Ch. 183.

947. Right of entry to effect—Breaking into house.—An attachment is a *non omittas* in itself, & therefore a sheriff can break house to arrest, for the writ is for the person (COKE, C.J.).—BRIGGS' CASE (1615), 1 Roll. Rep. 336 ; 81 E. R. 526.

Annotations :—*Consd.* Burdett *v.* Abbott (1811), 14 East, 1. *Refd.* Harvey *v.* Harvey (1884), 26 Ch. D. 641.

948. — Outer door fastened.—To an action of trespass against the Speaker of the House of Commons for forcibly breaking into the message of pltf., the outer door being shut & fastened, & arresting him there, & imprisoning him, it is a legal justification & bar to plead that a Parliament was held, which was sitting during the period of the trespasses complained of ; that pltf. was a member of the House of Commons ; & that the House having resolved that a certain letter was a libellous & scandalous paper, reflecting on the just rights & privileges of the House, & that pltf., who had admitted that the said letter was printed by his authority, had been thereby guilty of a breach of the privileges of that House ; & having ordered that for his offence he should be committed to the Tower, & that the Speaker should issue his warrant accordingly ; deft., as Speaker, in execution of the order, issued his warrant to the Serjeant-at-Arms to arrest pltf., by virtue of which warrant the Serjeant-at-Arms went to the message of pltf., where he then was, to execute it ; & because the outer door was fastened, & he could not enter, after audible notification of his purpose, & demand made of admission, he broke & entered pltf.'s message, & arrested him.—BURDETT *v.* ABBOTT (1811), 14 East, 1 ; 104 E. R. 501 ; *affd.* (1812), 4 Taunt. 401, Ex. Ch. ; (1817), 5 Dow, 165, H. L.

Annotations :—*Folld.* Harvey *v.* Harvey (1884), 26 Ch. D. 644. *Mentd.* Launock *v.* Brown (1819), 2 B. & Ald. 592 ; *It. v.* Hobhouse (1820), 2 Chit. 207 ; *Redford v. Birley* (1822), 3 Stark. 76 ; *Bedroochund v. Elphinstone* (1830), 2 State Tr. N. S. 379 ; *Wellesley v. Beaufort* (1831), 2 Russ. & M. 639 ; *Beaumont v. Barrett* (1836), 1 Moo. P. C. 59 ; *Stockdale v. Hansard* (1839), 9 Ad. & El. 1 ; *Middlesex Sheriff's Case* (1840), 11 Ad. & El. 273 ; *Re Clarke* (1842), 2 Q. B. 619 ; *Kielley v. Carson* (1842), 4 Moo. P. C. 63 ; *Howard v. Gosset* (1845), 10 Q. B. 359 ; *Re Martin, Ex p.* Van Sandau (1845), 4 L. T. O. S. 369 ; *Fenton v. Hampton* (1858), 11 Moo. P. C. C. 347 ; *Re Fernandes* (1861), 6 H. & N. 717 ; *Ex p.* Fernandez (1861), 10 C. B. N. S. 3 ; *Dill v. Murphy* (1864), 1 Moo. P. C. N. S. 487 ; A.-G. of New South Wales *v.* Macpherson (1870), L. R. 3 P. C. 268 ; *Bradlaugh v. Gossett* (1884), 12 Q. B. D. 271 ; *Barton v. Taylor* (1886), 2 T. L. R. 382 ; *Fielding v. Thomas*, [1896] A. C. 600 ; *Heddon v. Evans* (1919), 35 T. L. R. 642.

PART VI. SECT. 7, SUB-SECT. 1.

d. On writ which was continuation of a previous writ.—Process issued a year after the swearing of the affidavit, arrest made on a writ which was a continuation of the first writ, good.—PALMER *v.* DINSMORE (1874), 2 Pug. 150.—CAN.

Sect. 7.—Execution: Sub-sects. 1, 2 & 3. Sect. 8: Sub-sect. 1.]

949. — Disobedience to order for delivery up of deeds.]—HARVEY v. HARVEY, No. 497, ante.

950. Period of custody—Gaoler bound to bring accused before court—Nature of contempt not disclosed on face of warrant.]—In an action in which plff. acted as solr. & improperly signed judgment & issued execution & received the amount of the levy, an order was made on him to bring that amount into ct., & on his non-compliance an order of attachment was made, under which he was arrested & committed to the custody of deft. The order was to attach plff. so as to have him before the C. P. Div. of the High Ct. of Justice to answer an alleged contempt, but the order did not show what the contempt was. Plff. was kept in custody for more than a year, & then applied for & obtained his discharge under a judge's order. In an action by him against deft. for detaining him beyond the year:—*Held*: deft. having complied with the order was not liable to an action, but was protected by the exigency of the writ.—*GIRAVES v. KEENE* (1879), 4 Ex. D. 73; 40 L. T. 216; 27 W. R. 416.

Annotation.—*Mentd. Demer v. Cook* (1903), 88 L. T. 629.

951. Effect of arrest—Of client by solicitor—Whether solicitor's lien discharged.]—A solr. has a lien on costs awarded to his client, & such lien is not discharged by taking the client in execution under a writ of *ca. sa.*—*O'BRIEN v. LEWIS* (1863), 3 De G. J. & Sm. 606; 2 New Rep. 536; 32 L. J. Ch. 665; 8 L. T. 683; 27 J. P. 532; 9 Jur. N. S. 764; 11 W. R. 973; 46 E. R. 772, L. J. J.

See, further, LIEN; SOLICITORS.

952. — Disobedience to order for payment of money—Whether debtor's property released.]—The seizure of the person of debtor for contempt of this ct. is not, under Judgments Act, 1838 (c. 110), s. 18, a release of the debts against debtor's property.—*ROBERTS v. BALL* (1855), 3 Sm. & G. 168; 3 Eq. Rep. 632; 24 L. J. Ch. 471; 25 L. T. O. S. 139; 1 Jur. N. S. 585; 3 W. R. 406; 65 E. R. 610.

953. — On attachment issuing irregularly—Right to compensation—Not action for false imprisonment.]—Where an attachment is irregularly issued, the ct. will not permit deft. who is arrested under it, to bring an action for false imprisonment.

Even though the irregularity should proceed from error or inadvertence, deft. is entitled to compensation for the injury which he has sustained by the execution of the attachment.—*KILSHAW v. CROWTHER* (1825), 3 L. J. O. S. Ch. 101, L. C.

954. Duty to stay enforcement of writ—Compliance with order after issue of writ—But before enforcement.]—After the issue of a writ of attachment for contempt in not complying with an order of the ct., but before it was enforced, the order was duly complied with by deft., & immediate notice of such compliance was given to plff.'s solrs. Dft. was nevertheless arrested & imprisoned:—*Held*: the arrest was altogether irregular; & it was the duty of plff.'s solrs. to have stayed the enforcement of the writ of attachment.—*GAY v. HANCOCK* (1887), 56 L. T. 726.

Enforcement of process—Against corporation.]—See CORPORATIONS, Vol. XIII., p. 288, No. 189.

Delivery up of ward of court.]—See INFANTS & CHILDREN.

Prison treatment, *see* PRISONS.

SUB-SECT. 2.—RE-ARREST.

See, generally, EXECUTION; SHERIFFS & BAILIFFS.

Discharge from custody, *see* Sect. 10, *post*.

955. General rule.]—The rule that a party is not to be arrested twice for the same demand, only holds where the first arrest has been a regular one. If, therefore, deft. be discharged from custody on account of irregularity in the proceedings, he may afterwards be taken into custody in a regular manner.—*NYAS v. NOY* (1838), 2 Jur. 547.

956. —.]—ANDREWES v. WALTON, No. 966, *post*.

957. After discharge—By consent of plaintiff—On terms.]—Deft. cannot be taken in execution twice on the same judgment, though he were discharged the first time by plff.'s consent, upon an express undertaking that he should be liable to be taken in execution again, if he failed to comply with the terms agreed on.—*BLACKBURN v. STUPART* (1802), 2 East, 243; 102 E. R. 362.

Annotations.—*Distd. Good v. Wilks* (1817), 6 M. & S. 413; *Andrewes v. Walton* (1849), 19 L. J. Ch. 249. *Refd.* *Goodman v. Chase* (1818), 1 B. & Ald. 297; *Baker v. Ridgway* (1821), 2 Bing. 41; *Denton v. Godfrey* (1847), 11 Jur. 800; *Haines v. East India Co.* (1856), 11 Moo. P. C. C. 39; *Catlin v. Kernott* (1858), 3 C. B. N. S. 796. *Mentd.* *Atkinson v. Bayntun* (1835), 1 Scott, 401.

958. —.]—An alias attachment lies for non-payment of money pursuant to a rule of ct. founded on an award, where deft. has been suffered to go at large upon the original attachment, upon terms which he has failed to comply with.

Here the writ is not only to procure satisfaction to the party, but also to satisfy the ct. for the contempt (*BAYLEY, J.*).—*GOOD v. WILKS* (1817), 6 M. & S. 413; 105 E. R. 1297.

959. — On ground of irregularities in proceedings.]—NYAS v. NOY, No. 955, *ante*.

960. —.]—Deft. arrested on a *ca. sa.* & discharged by reason of irregularity, may be taken on a second *ca. sa.* upon the same judgment.—*MERCHANT v. FRANKIS* (1842), 3 Q. B. 1; 2 Gal. & Dav. 473; 114 E. R. 407.

961. — Order itself not discharged—Second order of committal regular.]—Deft. who had obtained a month's time for answering, on condition of consenting to a Serjeant-at-Arms, as directed by Ord. 21 of Aug. 1833, was, in default of putting in an answer, taken into custody. In consequence of an irregularity in the order of committal, he was, on motion, made on that purpose, discharged from custody, but the order itself was not discharged. Further default having been made, a second order of committal was issued, under which he was taken into custody:—*Held*: the second order was regular.—*SMITH v. STRICKWOOD* (1842), 11 L. J. Ch. 109; 6 Jur. 76.

962. —.]—Deft., in custody for want of answer, not having been brought to the bar of the ct. within the limited period, was discharged:—*Held*: plff. might, by special order, proceed by a second attachment to enforce an answer.—*ROBBY v. WHITEWOOD* (1843), 7 Beav. 77; 13 L. J. Ch. 22; 7 Jur. 1075; 49 E. R. 992.

963. — On ground of privilege—Expiry of privilege.]—Where a party arrested under a *ca. sa.* is discharged on the ground of privilege, the writ is not executed, & he may be retaken under it when his privilege expires.—*REYNOLDS v. NEWTON* (1841), 1 Gal. & Dav. 153.

964. —.]—*Qu.*: whether a party who has been taken in execution, & discharged out of

PART VI. SECT. 7, SUB-SECT. 2.

1. After discharge—By one of several

plaintiffs.—If deft. in custody is discharged by one of several plffs., he cannot be again arrested at the instance

of a co-plff.—*ANDREWES v. CLARKE* (1835), Ber. 65.—*CAN.*

custody, on the ground of privilege at the time of the arrest, can be again taken in execution upon the same judgment.—*TOWERS v. NEWTON* (1841), 1 Q. B. 319; *Woll.* 149; 10 L. J. Q. B. 106; 5 Jur. 1035; 113 E. R. 1153.

Annotation :—*Mentl.* *Greenfields v. Harris* (1842), 9 M. & W. 774.

965. ———. ———.]—Where a party arrested under a *ca. sa.* is discharged on the ground of temporary privilege, the writ is not executed. He may, therefore, be taken by another writ on the same judgment, which is not satisfied by such a custody.—*PHILLIPS v. ———* (1843), 7 Jur. 672.

966. ———. ———.]—By consent—Issue of second writ of attachment.]—Pltf. was arrested upon a writ of attachment for non-payment of costs, but it being ascertained that he was privileged at the time of his arrest, he was discharged out of custody, by consent :—*Held* : debt. was not precluded from issuing a second writ of attachment in respect of the same costs.

The voluntary discharge of a party irregularly arrested will not prejudice the right of the other party to enforce his demand by the same process or by a new writ.—*ANDREWEES v. WALTON* (1849), 1 Mac. & G. 380; 2 H. & Tw. 154; 19 L. J. Ch. 249; 14 Jur. 260; 41 E. R. 1312, L. C.

967. ———. ———.]—Procured *ex parte* by misrepresentation—Insufficient affidavits filed—Revival of original order of attachment.]—Deft. being in default for not making an affidavit of documents, pltf. obtained an order for his attachment. Deft. then filed an affidavit, & thereupon obtained *ex p.* an order of course discharging his contempt. Pltf. now moved to set aside the order of course, on the ground that the affidavit was insufficient, & that therefore the order of course had been obtained on a misrepresentation :—*Held* : the question of sufficiency could be raised on this motion, & the affidavit being insufficient, the order of course must be discharged, so as to revive the original order for attachment.—*PRICE v. PRICE* (1879), 48 L. J. Ch. 215.

968. ———. ———.]—By mistake—No jurisdiction to issue second writ under Debtors Act, 1869 (c. 62), s. 4—Re-arrest under original order.]—An order for attachment made under sect. 4 of the above Act, is not in the nature of a remedy for the recovery of a debt, but is in the nature of a punishment, that is, punishment for an offence, & a second punishment cannot be awarded for the same offence.

A debtor had been imprisoned under an order made for his attachment for default in payment of a sum of money which he had been ordered to pay under sect. 3 of the above Act, but was by mistake released before the expiration of the one year limited for imprisonment by the sect. :—*Held* : there was no jurisdiction to make a second order for attachment for the same default. *Semble* : an order for re-arrest might have been made under the original order for attachment.

In case of an order for re-arrest, the period of imprisonment must end with the twelve months from the date of the original imprisonment, inclusive of the time the debtor had been at liberty (*MATHEW, L.J.*).—*CHURCH'S TRUSTEE v. HIBBARD*, [1902] 2 Ch. 784; 72 L. J. Ch. 46; 87 L. T. 412; 51 W. R. 293, C. A.

See, also, *BANKRUPTCY & INSOLVENCY*, Vol. V., p. 1042, Nos. 8512–8514.

968 i. ———. ———.]—By mistake—Application to renew attachment—Must be on notice.]—*CUNNINGHAM v. M'CAMBIE* (1837), Sav. & Sc. 427.—*IR.*

i. ———. ———.]—Prisoner not in fact liberated—Re-arrest under similar writ.]—The sheriff of W., to whom a writ of

attachment was directed, & who had the prisoner in custody under it in the county of S., on his way to the county of Y., where he was directed to have the prisoner, stated to the prisoner that he then discharged him out of custody under that writ, & re-arrested

969. On rescue of defendant.]—To a writ of attachment for want of answer, the sheriff returned, that he had taken debt. but that he had been rescued :—*Held* : the next process of contempt was by sending the Serjeant-at-Arms, & not by sending the messenger.—*LEWIS v. JOHN* (1835), 7 L. J. Ch. 300.

970. Period of imprisonment on re-arrest—Debtors Act, 1869 (c. 62), s. 4.]—*CHURCH'S TRUSTEE v. HIBBARD*, No. 968, *ante*.

Duration of imprisonment in order of committal, *see* Sect. 6, sub-sect. 5, B., *ante*.

SUB-SECT. 3.—BAIL.

971. General rule—Distinction between attachment & committal.]—*BUIST v. BRIDGE*, No. 495, *ante*.

972. Not where person committed—For contempt in face of court—Commitment equivalent to conviction.]—H. being brought up by *habeas corpus* it appeared upon the return that she had been committed for contemptuous words spoken of justices in open ct. She now moved to be bailed :—*Held* : this commitment was a conviction & there was no power to bail in such cases.—*ANON.* (1730), 1 Barn. K. B. 371; 94 E. R. 250.

973. ———. ———.]—Gross contempt—Though prosecutor consent.]—A person committed for a gross contempt, cannot be bailed the day after the commitment, though prosecutor consent.—*FARRELL'S CASE* (1738), Andr. 298; 95 E. R. 400.

974. Attachment—Sheriff cannot take bail—Judge at chambers.]—The sheriff cannot take bail on an attachment, but a judge at chambers can.—*ANON.* (1721), 1 Stra. 479; 93 E. R. 647.

975. ———. ———.]—Bail before commitment.]—An attachment for non-payment of money is in the nature of mesne process.

The ct. ultimately pronounce whether the party is to be committed for contempt or not, for then only, & not before, does commitment take place. In the meantime, it is the usual course to admit the party to bail (*BAYLEY, J.*).—*LEWIS v. MORLAND* (1818), 2 B. & Ald. 56; 106 E. R. 288.

Annotations :—*Mentl.* *Plummer v. Savage* (1818), 6 Price, 126; *Blower v. Hollis* (1833), 1 Cr. & M. 393; *Brown v. Jarvis* (1836), 2 Gale, 97; *Cobbett v. Hudson* (1849), 18 L. J. Q. B. 233.

SECT. 8.—PRIVILEGE FROM ARREST.

SUB-SECT. 1.—IN RESPECT OF WHAT CONTEMPTS.

Distinction between criminal & non-criminal contempt, *see* Part II., *ante*.

976. General rule.]—Against all civil process privilege protects; but against contempt for not obeying civil process, if that contempt is in its nature or by its incidents criminal, privilege protects not. He who has privilege of Parliament in all civil matters, matters which, whatever be the form, are in substance of a civil nature, may plead it with success, but he can in no criminal matter be heard to urge such privilege. Members of Parliament are privileged against commitment, *quâ* process, to compel them to do an act; against commitment for breach of an order of a personal description, if the breach be not

him under a similar writ issued to the sheriff of Y., who had deputed the sheriff of W. to execute it :—*Held* : there had not been a discharge in fact but prisoner was kept in custody.—*It. v. HAWKE* (1888), 28 N. B. R. 400.—*CAN.*

Sect. 8. — Privilege from arrest: Sub-sects. 1 & 2, A., B., C., D., E., F., G., H. & I. Sect. 9: Sub-sects. 1 & 2, A., B. & C.]

accompanied by criminal incidents, & provided the commitment be not in the nature of punishment but rather in the nature of process to compel a performance, in all such matters members of Parliament are protected; but they are no more protected than the rest of the King's subjects from commitment in execution of a sentence where the sentence is that of a ct. of competent jurisdiction, & has been duly & regularly pronounced (LORD BROUGHAM, C.).—WELLESLEY v. BEAUFORT (DUKE), No. 10, *ante*.

977. — Parliamentary privilege.—It is only in cases of gross contempt of ct. that the ct. will make an order for the committal of a member of Parliament.

The ct. declined to make an order for the committal of a member of the House of Commons during the session of Parliament for non-compliance with an order directing him to pay money & deliver over documents within a specified time. Parliament having subsequently been dissolved, & the late member not having been re-elected at the ensuing general election, the motion for his committal was renewed within forty days after the dissolution:—*Held*: (1) the privilege of the late member extended over a period of forty days after the dissolution; (2) under the circumstances, the refusal of the former motion was no bar to the subsequent application grounded on the same contempt.—*Re* ANGLO-FRENCH CO-OPERATIVE SOCIETY (1880), 14 Ch. D. 533; 49 L. J. Ch. 388; 28 W. R. 580.

Annotation:—Reid. Re Armstrong, Ex p. Lindsay, [1892] 1 Q. B. 327.

978. Not where contempt criminal.—By its nature or incidents.—WELLESLEY v. BEAUFORT (DUKE), No. 976, *ante*.

979. ——*Re* LUDLOW CHARITIES, LECHMERE (HARLTON'S CASE, No. 14, *ante*.

980. ——*R. v. CASTRO, ONSLOW'S & WHALLEY'S CASE, No. 241, ante*.

981. ——*On a motion to commit a member of Parliament for refusing to submit to examination touching a bkpt.'s affairs:—Held*: the member was protected by his privilege, as the order for committal sought would be not punitive in its nature, but a civil process to enforce obedience to the order of the ct.—*Re* ARMSTRONG, *Ex p. LINDSAY*, [1892] 1 Q. B. 327; 65 L. T. 464; 40 W. R. 159; 7 T. L. R. 749; 17 Cox, C. C. 349; 8 Morr. 271.

Annotation:—Mentl. Seldon v. Wilde, [1911] 1 K. B. 701.

982. Disobedience to order.—*Re* PEEL'S (SIR ROBERT) SCHOOL, TAMWORTH, *Ex p. CHARITY COMRS.*, No. 440, *ante*.

983. — Not if attachment punitive.—*Re* FRESTON, No. 15, *ante*.

984. ——*Attachment for breach of an order, being of a punitive character, is not subject to privilege of Parliament.—Re* GENT, GENT-DAVIS v. HARRIS (1888), 40 Ch. D. 190; 58 L. J. Ch. 162; 60 L. T. 355; 37 W. R. 151; 5 T. L. R. 89.

Annotations:—Reid. Re Smith, Hands v. Andrews, [1893] 2 Ch. 1; Church's Trustee v. Hibbard, [1902] 2 Ch. 784.

985. ——*YOUNG v. YOUNG* (1896), 12 T. L. R. 503.

986. — Order not punitive.—*Re* ARMSTRONG, *Ex p. LINDSAY*, No. 981, *ante*.

987. — Non-payment of rates—Under Distress for Rates Act, 1849 (c. 14).—Commitment for non-payment of rates, where there is no distress recoverable under the provisions of sects. 2 & 3 & sched. D. of the above Act, is merely a civil process for enforcing payment, so that a witness in a suit returning from the ct. in which such suit had been heard is privileged from arrest under an order for such commitment.—HOERN v. FOWLER, *Ex p. HOERN* (1892), 62 L. J. Q. B. 49; 9 T. L. R. 6; 5 R. 33.

SUB-SECT. 2.—WHAT PERSONS PRIVILEGED.

A. The Crown and Members of the Royal Household.
See CONSTITUTIONAL LAW, Vol. XI., pp. 520, 521, Nos. 254-271.

B. Ambassadors and Other Public Ministers of Foreign States and their Entourage.
See CONSTITUTIONAL LAW, Vol. XI., pp. 536-542, Nos. 390-465.

C. Barristers.
See SHERIFFS & BAILIFFS.

Whether Inns of Court are places privileged from arrest.—*See* BARRISTERS, Vol. III., p. 315, No. 6.

D. Clergymen.
See ECCLESIASTICAL LAW.

E. Members of Parliament.
See PARLIAMENT.
In respect of what contempts privilege may be claimed.—*See* Sub-sect. 1, *ante*.

F. Parties and Witnesses attending Court.
See SHERIFFS & BAILIFFS.

G. Peers.
See PARLIAMENT; PEERAGES & DIGNITIES.

H. Public Authorities.
See PUBLIC AUTHORITIES & PUBLIC OFFICERS.

I. Solicitors.
See SOLICITORS.

SECT. 9.—APPEALS FROM ORDER.

SUB-SECT. 1.—LEAVE TO APPEAL.

See JUDICATURE Act, 1894 (c. 16), s. 1.

988. Necessity for—From order refusing to commit—Whether liberty of subject involved.—*LANCASHIRE v. HUNT*, [1895] W. N. 52.

989. ——*A judge having refused an application for the committal of defts. on the ground of a breach by them of an undertaking which they had given to the ct. & having refused to give leave to appeal:—Held*: the liberty of the subject was not concerned & an appeal could not be brought without leave, which the ct. would refuse to give.—*BOWDEN v. YOXALL*, [1901] 1 Ch. 1; 70 L. J. Ch. 5; 83 L. T. 419; 49 W. R. 247; 17 T. L. R. 43; 45 Sol. Jo. 59, C. A.

PART VI. SECT. 8, SUB-SECT. 1.

983 i. Disobedience to order—Not if attachment criminal.—*Re* BURKHARDT v. VAN WART, *Ex p. VAN WART* (1900), 35 N. B. R. 78.—CAN.

SUB-SECT. 2.—WHAT ORDERS MAY BE APPEALED AGAINST.

A. Not Orders made in "Criminal Cause or Matter."

See Judicature Act, 1873 (c. 66), ss. 19, 47.

Distinction between criminal & non-criminal contempt, see Part II., ante.

See, generally, CRIMINAL LAW & PROCEDURE.

990. What is "criminal cause or matter"—Insulting judge in court.—A warrant was issued for the committal to prison of a person guilty of a wilful insult during the sitting of a county ct. *Qu.*: whether the committal for contempt was not a criminal matter in which no appeal from the Queen's Bench should have been heard.—*R. v. STAFFORD COUNTY COURT JUDGE* (1888), 57 L. J. Q. B. 483; *sub nom. R. v. JORDAN*, 36 W. R. 797, C. A.

Annotations:—*Reid. O'Shea v. O'Shea & Parnell* (1890), 15 P. D. 59; *Scott v. Scott*, [1912] P. 241.

991. — Committal of unqualified person acting as solicitor.—No appeal lies from an order of the High Ct. for the imprisonment of an unqualified person for acting as a solr.—*Re GRAYSTON*, *Re WALL* (1888), 4 T. L. R. 772, C. A.

Annotations:—*Mentd. Re Kelly* (1894), 43 W. R. 191; *Re Burton & Binkhorn*, [1903] 2 K. B. 300.

992. — Not where attachment granted to enforce obedience—Where disobedience not criminal.—*R. v. BARNARD*, No. 16, ante.

993. — Disobedience to orders for attendance before examiner.—*Re EVANS*, *EVANS v. NOTON*, No. 21, ante.

994. — Refusal to produce documents—Under Foreign Tribunals Evidence Act, 1856 (c. 113).—A witness refused to produce certain documents at an examination under the above Act, whereupon an application was made in chambers for leave to issue a writ of attachment against him. The judge refused to make the order:—*Held*: the judge's order was not made in a criminal matter, inasmuch as what was sought to be done by the writ of attachment was to compel the witness to produce the documents, & not merely to punish him, & therefore an appeal lay from the judge's decision.—*ECCLIS & (O. v. LOUISVILLE & NASHVILLE RY. CO.* (1911), 28 T. L. R. 36; 56 Sol. Jo. 74, D. C.; *reversd.* on another point, [1912] 1 K. B. 135, C. A.

995. — Publication of comments prejudicial to fair trial.—*O'SHEA v. O'SHEA & PARNELL*, No. 11, ante.

996. — Not publication of evidence heard in camera—In good faith.—*SCOTT v. SCOTT*, No. 301, ante.

Appeal from fine imposed by county court judge—For assault on bailiff.—See COUNTY COURTS, Vol. XIII., p. 455, No. 54.

Appeal from order of committal under Bankruptcy Act, 1883 (c. 52), s. 24 (2).—See BANKRUPTCY & INSOLVENCY, Vol. V., p. 1045, No. 8531.

How far disobedience by solicitor of orders of court are of a criminal nature.—See BANKRUPTCY

& INSOLVENCY, Vol. V., pp. 1029, 1030, Nos. 8415-8417.

B. Orders refusing Attachment and Committal.

997. Whether Court of Appeal has jurisdiction to entertain.—Plffs. moved to commit deflt. for contempt in having sold certain property of the intestate in the cause in disobedience to an order that she should deliver up to the receiver all property of the intestate in her hands, but the notice did not ask for restitution of the property. The Vice-Chancellor refused to commit, & made the costs of the application costs in the action:—*Held*: an appeal would not lie from this order.—*ASHWORTH v. OUTRAM* (No. 2) (1877), 5 Ch. D. 943, C. A.

Annotations:—*Expld. Jarman v. Chatterton* (1882), 20 Ch. D. 493. *Reid. Re Wray* (1887), 56 L. J. Ch. 1106.

998. — How jurisdiction exercised.—Where a judge has refused to commit for contempt, an appeal lies from such refusal, although where that refusal has been simply an exercise of judicial discretion, the Ct. of Appeal, while entertaining an appeal, will be slow to alter the decision of the ct. below. *Ashworth v. Outram* [No. 997, ante] must not be treated as laying down a general rule that no appeal lies from a refusal to commit.—*JARMAN v. CHATTERTON* (1882), 20 Ch. D. 493; 51 L. J. Ch. 471; 30 W. R. 461, C. A.

Annotations:—*Follid. Bristow v. Smyth* (1885), 2 T. L. R. 36. *Mentd. Re Wray* (1887), 56 L. J. Ch. 1106.

999. ——Where a judge has refused to commit for contempt an appeal lies from such refusal, although where such refusal has been simply an exercise of discretion, the Ct. of Appeal, while entertaining an appeal, will be slow to alter the decision of the ct. below.—*BRISTOW v. SMYTH* (1885), 2 T. L. R. 36, C. A.

1000. ——Where the judge below, while maintaining the jurisdiction, declines, in the exercise of his discretion, to order an attachment, on the ground that looking at all the circumstances of the case no benefit will be likely to arise by ordering the attachment, the Ct. of Appeal will not, at least in the absence of gross disobedience or contempt, interfere with this discretion.—*Re WRAY* (1887), 36 Ch. D. 138; 56 L. J. Ch. 1106; 57 L. T. 605; 36 W. R. 67; 3 T. L. R. 708, C. A.

Annotations:—*Consd. Mitchell v. Simpson* (1889), 23 Q. B. D. 373. *Mentd. Re Gent, Gent-Davis v. Harris* (1888), 40 Ch. D. 190; *Re Eady* (1890), 63 L. T. 762; *Re A Solicitor* (1891), 7 T. L. R. 183; *Iles v. T.*—(1892), 36 Sol. Jo. 502; *Re Smith, Hands v. Andrews*, [1893] 2 Ch. 1; *Re Berry, Duffield v. Williams*, [1896] 1 Ch. 939.

Appeal from refusal of county court judge to commit.—See COUNTY COURTS, Vol. XIII., p. 527, No. 784.

C. Orders as to Costs.

1001. Costs of refused motion—Not subject of appeal.—A motion to commit deflt. for breach of an injunction having been refused without costs, deflt. appealed.—*Held*: there was no rule that a motion to commit, if refused, must be refused with costs, & an appeal as to costs in such a case would

PART VI. SECT. 9, SUB-SECT. 2.—A.

990 i. What is "criminal cause or matter"—Insulting judge in court.—An attorney, conducting a case in ct., was repeatedly warned by the judge not to shout at the witnesses whom he was cross-examining. He continued to do so & on one occasion banged the table with his hand, making a loud report, & shouted: "Did you say so?" The judge told him that if he did not apologise he would be committed for contempt of ct. His answer was he would let the law take its course, upon which he was committed.—*Held*: the order was not appealable.—*R. v.*

BENSON (1914), App. D. 357.—S. AF.

g. — Not where committed for disobedience to injunction—No deliberate defiance of court.—*MOOSE MOUNTAIN LUMBER & HARDWARE CO. v. PARADIS* (1909), 12 W. L. R. 424.—CAN.

995 i. — Publication of comments prejudicial to fair trial.—*ELLIS v. BAIRD* (1888), 16 S. C. R. 147.—CAN.

995 ii. ——*ELLIS v. R.* (1892), 22 S. C. R. 7.—CAN.

995 iii. ——*GRANT v. GRANT* (1904), 36 N. S. R. 547.—CAN.

h. — Wilful disobedience of court's order.—*GODU RAM v. SURAJ MAL* (1905), 1 L. R. 27 All. 380.—IND.

k. — Refusal to aid sheriff in execution of writ.—An order attaching a constable for refusing to aid the sheriff in the execution of a writ is a judgment in a criminal cause or matter, from which no appeal lies to the Ct. of Appeal.—*A. G. v. KISSANE* (1893), 32 L. R. Ir. 220.—IR.

l. — Circular calculated to prejudice minds of possible witnesses.—*Re BOYLE LOCAL GOVERNMENT ELECTION PETITION* (1905), 39 I. L. T. 243.—IR.

Sect. 9.—Appeals from order: Sub-sect. 2, C. & D.; sub-sect. 3. Sect. 10: Sub-sects. 1, 2 & 3, A., B. & C.]

not be entertained.—*HOPE v. CARNEGIE* (1869), 4 Ch. App. 264; 20 L. T. 5, L. J.

Annotation:—*Apprvd. Taylor v. Dowlen* (1869), 4 Ch. App. 697.

1002. Where costs awarded as punishment—Order not within Judicature Act, 1873 (c. 66), s. 49.]—Upon a motion to commit deft. for breach of an injunction, the ct., prefacing its order by an expression of opinion that deft. had committed a breach of the injunction, made no other order than that he should pay the costs of the motion:—**Held:** an appeal from this order was not an appeal for costs only within sect. 49 of the above Act.—*WITT v. CORCORAN* (1876), 2 Ch. D. 69; 45 L. J. Ch. 603; 34 L. T. 550; 24 W. R. 501; 2 Char. Pr. Cas. 115, C. A.

Annotations:—*Fold. Stevens v. Met. Dist. Ry.* (1885), 29 Ch. D. 60. **Refd.** *Ashworth v. Outram* (No. 2) (1877), 5 Ch. D. 943; *Re Clements & Costa Rica Republic v. Erlanger* (1877), 46 L. J. Ch. 375; *Re Foster v. G. W. Ry.* (1882), 5 Q. B. D. 515; *Perkins v. Beresford* (1882), 47 L. T. 515; *Re Bradford* (1883), 31 W. R. 919; *Re Mills' Estate, Ex pr. Works & Public Buildings Comrs.* (1886), 34 Ch. D. 24; *Crowther v. Elgood* (1887), 56 L. J. Ch. 416. **Mentd.** *Dicks v. Yates* (1881), 44 L. T. 660.

1003. —.]—Where the jurisdiction of a judge to inflict costs on a party arises from his being guilty of breach of an injunction or other misconduct, an appeal lies as to costs, although the judge makes no order except that the party shall pay costs.—*STEVENS v. METROPOLITAN DISTRICT RY. CO.* (1885), 29 Ch. D. 60; 54 L. J. Ch. 737; 52 L. T. 832; 33 W. R. 531; 1 T. L. R. 282, C. A.

Costs of application for order of committal.]—See Sect. 6, sub-sect. 9, *ante*.

Payment of costs on discharge.]—See Sect. 10, sub-sect. 6, *post*.

D. Orders of Colonial Courts of Record.

See, generally, COURTS, pp. 134 *et seq.*, *post*.

1004. Jurisdiction of Judicial Committee to entertain—Order inflicting fines on practitioner.]—*RAINY v. SIERRA LEONE J.J.*, No. 7, *ante*.

1005. —Where appropriate punishment awarded—& fine imposed.]—The Judicial Committee will not entertain an appeal from an order of a colonial ct. of record inflicting punishment by fine or imprisonment for contempt, if it appears upon the face of the order that the party has committed a contempt, that he has been duly summoned, & that the punishment awarded is an appropriate one.—*MCDERMOTT v. BRITISH GUIANA JUDGES* (1868), L. R. 2 P. C. 341; 2 Moo. P. C. C. N. S. 466; 38 L. J. P. C. 1; 20 L. T. 47; 17 W. R. 352; 16 E. R. 590, P. C.

SUB-SECT. 3.—SECURITY FOR COSTS OF.

1006. General rule.]—Where an appeal is brought against an order for a writ of attachment, the ct. will not, in its discretion, as a general rule, order

security for the costs of the appeal to be given.—*HOOD BARRS v. HERIOT*, [1896] 2 Q. B. 375; 65 L. J. Q. B. 624; 45 W. R. 17; 40 Sol. Jo. 714, C. A.

SECT. 10.—DISCHARGE FROM CUSTODY.

SUB-SECT. 1.—IN GENERAL.

1007. Right to discharge—Cannot be waived by defendant.]—Where under 1 Will. 4, c. 36, deft. in custody becomes entitled to his discharge, he cannot waive that right by acquiescence or subsequent proceedings.

If deft. has once a right to his discharge he has neither power nor capacity to waive his right (*LORD LANGDALE, M.R.*).—*HAYNES v. BALL* (1841), 4 Beav. 101; 49 E. R. 276; *subsequent proceedings* (1842), 5 Beav. 140.

Annotation:—*Refd. Woodward v. Conebear* (1843), 13 L. J. Ch. 27.

SUB-SECT. 2.—JURISDICTION OF COURTS.

Jurisdiction to fine or commit.]—See Part III., *ante*.

1008. Judicial Committee of Privy Council—No jurisdiction to direct release—Pending appeal respecting merits of suit.]—This ct. has no jurisdiction to direct the release of a party imprisoned for a contempt in the ct. below, pending an appeal respecting the merits of the suit.—*HUGHES v. PORRAL* (1842), 4 Moo. P. C. C. 41; 13 E. R. 216, P. C.

1009. Court of Appeal—Will not interfere with discretion of judge of Chancery Division—Refusing release.]—Where a judge of the Ch. Div. had sent a person to prison for contempt of ct. & refused a release, the Ct. of Appeal cannot interfere with the discretion exercised by the judge.—*SMITH v. LEWIS* (1876), 2 Char. Pr. Cas. 15.

1010. Ecclesiastical court—No jurisdiction to direct release—Contempt signified to temporal jurisdiction—Imprisonment by temporal court.]—Where an ecclesiastical ct. has, at the instance of a party to a suit, signified a contempt to the temporal jurisdiction, & imprisonment follows, the ct. has no power to release, except on the obedience of the party imprisoned.—*BARLEE v. BARLEE* (1822), 1 Add. 301; 162 E. R. 105.

Annotation:—*Refd. Weldon v. Weldon* (1883), 9 P. D. 52
See, further, ECCLESIASTICAL LAW.

To what courts application for release made.]—See Sub-sect. 3, B., *post*.

SUB-SECT. 3.—THE APPLICATION.

A. In General.

Application for attachment or committal.]—See Sect. 5, sub-sect. 5, *ante*.

1011. Priority of motion.]—On a motion day a motion to discharge a prisoner from custody is entitled to priority over other motions.—*ASHTON v. SHORROCK* (1880), 43 L. T. 530; 29 W. R. 117.

1012. Who may apply—Prisoner lunatic—Next

PART VI. SECT. 9, SUB-SECT. 2.—D.

m. Jurisdiction of Judicial Committee to entertain—Appropriate punishment not awarded—Contempt by practitioner.]—An order suspending an attorney & barrister of the Supreme Ct. of N. S. from practising in that ct., for having addressed a letter to the Chief Justice, reflecting on the judges & the administration of justice generally in the ct., was discharged by the Judicial Committee, as it substituted a penalty & mode of punishment which was not the appropriate & fitting punishment for the offence.—*Re WAL-LACE* (1866), L. R. 1 P. C. 283.—CAN.

n. —Order suspending advocate from practising.]—After an altercation, during the hearing of a case, with one of the judges of the High Ct., when he alleged that he had been told by the judge to "hold his tongue" & to "sit down" an advocate of the ct. attempted to defend his conduct by publishing in a newspaper, of which he was the editor, an article which was a libel reflecting not only on the judge before whom he had appeared but upon other judges of the ct. in their judicial capacity, & in reference to their conduct in the discharge of their public duties, & which amounted to a contempt of ct.:—**Held:** such

publication constituted "reasonable cause" for an order suspending the advocate from practising.—*Re SARBADICARY* (1906), 1 L. R. 29 All. 95; L. R. 34 Ind. App. 41.—IND.

PART VI. SECT. 10, SUB-SECT. 2.

o. Judge in chambers—Will not release prisoner committed by court of governor & council—Non-payment of attorney.]—*CAPELL v. CAPELL* (1865), P. R. 183.—CAN.

PART VI. SECT. 10, SUB-SECT. 3.—A.

p. Who may apply—Not person in default.]—An application by deft. com-

friend.]—A prisoner, having been in prison twelve months in execution on a judgment for a debt not exceeding \$20, was disordered in mind & unable to transact business. His wife gave notice to pltf. that she should apply to the ct. for his discharge under 48 Geo. 3, c. 123, & she applied accordingly:—*Held*: the ct. might act upon the wife's application & discharge the prisoner.

Here the party cannot, himself, apply for his discharge. Perhaps in strictness, there should be a committee & he should make the application, but we cannot suppose that, to discharge the prisoner from a debt of this amount, such a process should be gone through, & the application here being made by a person so near as the wife, I think the rule may be granted (*LITTLEDALE, J.*).—*CLAY v. BOWLER* (1836), 5 Ad. & El. 400; 2 Har. & W. 283; 6 Nev. & M. K. B. 814; 111 E. R. 1217.

Annotation:—*Reid. Fuge v. Rogers* (1844), 8 Jur. 271.

See, further, LUNATICS & PERSONS OF UNSOUND MIND.

1013. Second application—Costs of first not paid.]—A motion to discharge from custody being refused, with costs, the party cannot afterwards renew the motion till the costs have been paid.—*OLDFIELD v. COBBETT* (1849), 12 Beav. 91; 50 E. R. 995.

Annotation:—*Reid. Morton v. Palmer* (1882), 9 Q. B. D. 89.

Habeas corpus—To enable prisoner to appear in court to argue his case in person.]—*See CROWN PRACTICE*, p. 275, No. 873, *post*.

B. To Whom made.

1014. To court of which proceeding complained of constitutes contempt.]—If a person going to make an affidavit before a master was arrested, this ct. would discharge him, but a judge would not; as the application must be to that ct. of which the proceeding is a contempt (*LORD ELDON, C.*).—*LIST'S CASE* (1813), 2 Ves. & B. 373; 35 E. R. 361; *sub nom. Re CUMMING, Ex p. LIST* (1814), 2 Rose, 24, L. C.; *subsequent proceedings, sub nom. Ex p. BRYANT* (1815), 1 Madd. 49.

Annotations:—*Consd. Ex p. Watkins* (1837), 6 L. J. Ch. 225. *Reid. Franklyn v. Colquhoun* (1816), 1 Madd. 580; *Plomer v. Macdonough* (1847), 1 De G. & Sm. 232; *Dodd v. Holbrook, Re Pittman* (1865), 35 L. J. Ch. 175; *McGeath v. Geraghty* (1866), 15 W. R. 127.

1015. —.]—The ct. by whose process petitioning creditor is arrested is the proper ct. to give relief.—*SELBY v. HILLS* (1832), 8 Bing. 166; 1 Dowl. 257; 1 Moo. & S. 253; 1 L. J. C. P. 55; 131 E. R. 364.

Annotation:—*Reid. Hare v. Hyde* (1851), 15 J. P. Jo. 67.

1016. —.]—A solr. who had retired from practice was taken on an attachment for non-payment of costs in a Ch. suit, whilst returning from attending an appeal in the House of Lords, as agent for applt.:—*Held*: he was entitled to be discharged, & the order for his discharge might be made either by the Ct. of Ch. or by the House of Lords.—*A.-G. v. SKINNERS' CO., Ex p. WATKINS* (1837), 8 Sim. 377; *Coop. Pr. Cas.* 1; 59 E. R. 150; *sub nom. Ex p. WATKINS*, 6 L. J. Ch. 225; 1 Jur. 236.

1017. —.]—*Semble*: a Vice-Chancellor cannot, unless specially authorised by the Lord Chancellor, make an order, or motion in a Rolls cause, for the discharge of a prisoner, arrested

under an attachment for non-payment of costs in another suit, brought before him on *habeas corpus*.

The proposition that every judge has jurisdiction to discharge a prisoner lawfully detained certainly admits of some qualification. Thus it has been decided that a party committed in Bkpcy. could not be discharged by an order in Ch. & that a party committed by the Ct. of Ch. cannot in all cases be discharged by the Ct. of Exch. The same rule, I think, would prevent a judge in one branch of this ct. from discharging a party attached under an order made in another branch of the ct. (*WIGRAM, V.-C.*).—*NEWTON v. ASKEW* (1848), 6 Hare, 319; 18 L. J. Ch. 42; 13 Jur. 186; 67 E. R. 1188; *sub nom. NEWTON v. ASKEW, Re NEWTON*, 11 L. T. O. S. 326.

1018. —.]—Where an insolvent, on his return from attending the Ct. of Bkpcy. on his own petition for protection under 5 & 6 Vict. c. 116 was arrested under an attachment of the Ct. of Ch. his application to the Ct. of Ch. to be discharged was held improper, & refused.—*PROMER v. MACDONOUGH* (1847), 1 De G. & Sm. 232; 16 L. J. Bcy. 14; 9 L. T. O. S. 351; 11 Jur. 899; 63 E. R. 1046.

1019. — Contempt of court of equity.]—Under Debtors Imprisonment Act, 1758 (c. 28), & Judgments Act, 1838 (c. 110), s. 18, a judge of the Ct. of Ch. may order the discharge of a prisoner who has lain in prison for a year, for contempt of an order of the Ct. of Ch. in not paying costs amounting to less than £20.—*LISTER v. LISTER* (1850), 2 H. & Tw. 174; 14 Jur. 300; 47 E. R. 1645, L. C.

1020. — Application to court in banc—Contempt in trial at Nisi Prius.]—A witness on a trial at *Nisi Prius* was arrested *reduendo*, under a warrant of commitment for not appearing to a summons issued on a judgment recovered against him in a county ct.:—*Held*: the application for his discharge was properly made to the ct. *in banc*.—*KIMPTON v. LONDON & NORTH WESTERN RY. CO.* (1851), 9 Exch. 766; 23 L. J. Ex. 232; 23 L. T. O. S. 96; 18 J. P. 617; 2 W. R. 430; 2 C. L. R. 1026; 156 E. R. 328.

Annotation:—*Reid. Hoborn v. Fowler, Ex p. Hoborn* (1892), 62 L. J. Q. B. 49.

1021. —.]—If pltf. while attending the execution of a writ of enquiry on an action brought by him in this ct. against defts. who had suffered judgment by default, be arrested by a *quo minus* at the suit of a third person, the under-sheriff before whom such inquiry is executed cannot discharge him, but the ct. will do so on motion.—*WALTERS v. REES* (1819), 4 Moore, C. P. 34.

1022. To judge who made order—Vacation business.]—*VAUGHAN v. DIX* (1896), 40 Sol. Jo. 846; *previous proceedings*, 40 Sol. Jo. 728.

1023. To Home Secretary—Where committal for fixed time.]—*SUTHERLAND v. SUTHERLAND* (1893), *Times*, Apr. 19.

Annotation:—*Reid. Re Day* (1845), 4 L. T. O. S. 419.

C. Service of Notice of Motion.

Service of notice of motion to attach or commit.]

—*See Sect. 5, sub-sect. 6, C., ante.*

1024. Necessity for service on plaintiff—Or his solicitor.]—Where deft. had been in prison twelve months for a debt not exceeding £20 the ct. discharged him on notice of the application to pltf.'s attorney, who was also his son, pltf. being dead &

mitted for contempt for an order that he be brought before the ct. for the purpose of moving in person for his discharge from custody was refused.—*ROBERTS v. DONOVAN* (1894), 16 P. R.

456.—CAN.

q. Application for discharge must be on notice of motion.]—*MILLS v. MAGENNIS* (1841), 3 I. L. R. 271.—*IR.*

PART VI. SECT. 10, SUB-SECT. 3.—C.

10241. Necessity for service on opposite party—Not on his attorney—7 Vict. c. 3, s. 8.]—*GARRISON v. BALKWELL* (1844), 1 U. C. R. 2.—*CAN.*

Sect. 10.—Discharge from custody: Sub-sect. 3, C. & D.; sub-sect. 4.]

the attorney refusing to give any information as to who was his personal representative.—*POOLE v. STEED* (1843), 11 M. & W. 759; 1 L. T. O. S. 315.

1025. ———.]—Notice by deft., who has been twelve calendar months in execution for a debt not exceeding £20, of his intention to apply for his discharge under 48 Geo. 3, c. 123, may, where the residence of pltf. cannot be discovered, be served on his attorney.—*PERCIVAL v. RUSSELL* (1844), 7 Man. & G. 448; 8 Scott, N. R. 193; 135 E. R. 179.

1026. ———.]—*Re BRITTLE* (1896), 40 Sol. Jo. 801.

1027. ——— *Reasons for.*]—Deft. had been attached & committed to prison for contempt in disobeying an order to attend before an examiner, but afterwards under a writ of *habeas corpus ad test.*, sued out by him in prison, submitted to attend before the examiner, & was examined accordingly. On motion *ex p.* for deft.'s discharge from custody:—*Held*: a motion for his discharge could not be made *ex p.*, but only on notice to pltf., on the ground that pltf. was entitled to be present so as to ensure that all costs to which he was entitled were included in the order for discharge.—*Re EVANS, EVANS v. NOTON* (1893), 68 L. T. 324; 3 R. 399.

1028. What amounts to - Service on housekeeper at office of attorney.]—Motion to make a rule absolute for the discharge of a prisoner, no cause being shown. It was doubted whether the service of the rule was sufficient. The affidavit stated that it had been served on the housekeeper at the office of the attorney:—*Held*: this was not sufficient, as she might have been the housekeeper of a place where there were several offices, & it had not been shown that she was the servant of the attorney.—*Re ——— (A PRISONER)* (1844), 3 L. T. O. S. 161.

D. Affidavits in Support.

1029. How intitled.]—The affidavits on a motion to discharge a party out of custody, when an attachment has been issued in a cause, should be intitled R. v. (the person attached), in the original cause, & not in the original cause simply.—*BROWN v. EDWARDS* (1844), 2 Dow. & L. 520; 14 L. J. Q. B. 17; 4 L. T. O. S. 121; 8 Jur. 1122.

Affidavits in support of motions to attach in court.]—*See Sect. 5, sub-sect. 7, ante.*

SUB-SECT. 4.—GROUNDS FOR GRANTING OR REFUSING DISCHARGE.

1030. When granted—Contempt purged—By act of plaintiff.]—Pltf. filed his original bill, & deft. got into contempt for want of an answer. The answer was ready, but before it was filed pltf. amended his bill, so that the clerk in ct. could not receive the answer to the original bill, & it being considered that pltf. had by his own act purged deft.'s contempt, deft. moved that he might be discharged:—*Held*: the application must be

granted.—*BALL v. ETCHES* (1817), 1 Russ. & M. 324; 39 E. R. 125.

1031. ———.]—(1) An order was made *ex p.* to discharge deft. in contempt for not answering, on certificate of answer filed & payment of costs.

(2) The like order was made *ex p.* without payment of costs, on certificate that the bill had been amended since the contempt.—*GRAY v. CAMPBELL, SMITH v. CAMPBELL* (1830), 1 Russ. & M. 323; 30 E. R. 124, L. C.

Annotations:—As to (2) Consd. Oldfield v. Cobbett (1845), 1 Ph. 557. *Refd. Stafford v. Ball* (1835), 4 L. J. Ch. 249.

1032. ———.]—*ANON.*, No. 259, *ante*.

1033. ———.]—Deft. in contempt for not answering, upon certificate of having filed his answer, & upon affidavit of payment, is entitled upon motion or petition as of course to obtain an order for discharge.—*EDMONSON v. HAYTOR* (1836), 5 L. J. Ex. Eq. 22; 2 Y. & C. Ex. 3.

1034. ———.]—*By bonâ fide compliance.*]—Where a party is taken on an attachment for not obeying a judge's order, the ct. will not discharge him out of custody on an allegation that he has purged his contempt by complying with the order, unless it is satisfied that such compliance is *bonâ fide*, & not merely colourable.—*R. v. WESTON, Re BROWN v. EDWARDS* (1814), 4 L. T. O. S. 120; 8 Jur. 1122.

1035. ———.]—*By apology to court—& imprisonment.*]—*FELKIN v. HERBERT*, No. 238, *ante*.

Whether party in contempt will be heard before contempt purged, *see Part VII., post*.

1036. ———.]—*Contempt waived—What amounts to waiver.*]—*BEST v. GOMPERTZ*, No. 1156, *post*.

1037. ———.]—Deft. in contempt for want of answer, filed his answer & pltf. took an office copy of it:—*Held*: pltf. did not thereby waive the contempt.—*WOODWARD v. TWINAINE* (1839), 9 Sim. 301; 9 L. J. Ch. 52; 4 Jur. 120; 59 E. R. 373.

1038. ———.]—Where deft. is in custody for contempt in not putting in an answer, & an answer having been subsequently put in, pltf. files a replication, that is a waiver of the contempt, & deft. is entitled to be discharged without payment of costs.—*OLDFIELD v. COBBETT* (1845), 1 Ph. 557; 4 L. T. O. S. 390; 9 Jur. 931; 41 E. R. 744, L. C.

See, now, Debtors Act, 1869 (c. 62), s. 4.

1039. ———.]—To take an office copy of an answer put in by a deft. in contempt for want of answer, & to retain it till the time of excepting has expired, is a waiver of the contempt.—*HERRITT v. REYNOLDS* (1860), 2 Giff. 409; 6 Jur. N. S. 880; 8 W. R. 405; 66 E. R. 170.

1040. ———.]—*General pardon.*]—*ANON.* (1674), 1 Cas. in Ch. 238; 22 E. R. 778.

1041. ———.]—*Committal for insufficient cause.*]—*MILTON'S CASE* (1611), cited in Vaugh. 154; 124 E. R. 1015.

Annotation:—Refd. Wood's Case (1771), 3 Wils. 172.

1042. ———.]—*Committal without judicial hearing.*]—A person committed by the ct. of aldermen of the city of L. for contempt of the ct. in not doing as they wished him to do, without being heard

PART VI. SECT. 10, SUB-SECT. 3.—D.

r. Whether admissible to contradict statements in warrant of committal.]—A warrant of committal for contempt was on its face admittedly *regular*, & contained a statement that the prisoner before being committed was afforded an opportunity of showing

cause against the order for committal. The prisoner moved to be discharged from custody, & sought to use affidavits for the purpose of showing that he had been committed without being allowed such opportunity of showing cause:—*Held*: the affidavits were inadmissible to contradict the warrant in this respect.—*Re REA* (No. 2) (1879), 4 L. R. Ir. 345.—*IR.*

PART VI. SECT. 10, SUB-SECT. 4.

a. When granted—Where detention will not answer the purposes of justice.]—The ct. is bound to exercise its power to discharge a party in custody for a contempt in all cases where the purposes of justice will not be answered by detaining him in custody.—*JOYCE v. JOYCE* (1837), Sau. & Sc. 703.—*IR.*

judicially will be discharged on *habeas corpus*.—*SWALLOW v. CITY OF LONDON* (1666), 1 Sid. 287; 82 E. R. 1110.

Annotation :—*Mentd. Re Clarke* (1842), 2 Q. B. 619.

1043. — Offender sufficiently punished.—*R. v. WHEELER* (1761), 3 Burr. 1256; 97 E. R. 819.

Annotations :—*Mentd. Coulson v. Graham* (1814), 2 Chit. 57; *Re Isaacson* (1823), 8 Moore, C. P. 214.

1044. — Plaintiff opposing discharge.—The ct. will order a person who has been in custody for any given time under an attachment for a contempt of its authority in disobeying an injunction, to be discharged on motion, if his imprisonment be shown to its satisfaction to be commensurate with the degree of the offence, on the terms of paying the costs of his contempt, notwithstanding the application be opposed on the part of pltf.—*ADLARD v. SMITH* (1819), 6 Price, 321; 146 E. R. 822.

1045. — Consent of plaintiff.—*WOODBURN v. FISHER* (1844), 4 L. T. O. S. 249, L. C.

1046. — Impossibility of compliance—Proof of.—The ct. will not entertain a motion for the discharge of deft. from custody under an attachment for contempt in not producing deeds, papers, etc. before the master, on an affidavit that deft. has not, nor ever had, any such in his possession, or within his power. The course is, to leave an affidavit of the fact in the master's office, when, on obtaining his certificate, deft. will be discharged as a matter of course.

It was made part of the terms of a subsequent successful application for deft.'s discharge that he should pay the costs of that application & of the previous irregular motion.—*HURD v. PARTINGTON* (1823), 12 Price, 689; 117 E. R. 848.

1047. ——A solr. had been ordered to deliver to his client all deeds, papers, & documents belonging to her, but he delivered some only, alleging that the rest were detained by counsel for unpaid fees, & by other parties for money due, which the client had not advanced funds to meet. The solr. was committed to prison for such non-compliance with the order :—*Held* : he must be liberated.—*Re WILLIAMS* (1861), 3 De G. F. & J. 104; 30 L. J. Ch. 610; 4 L. T. O. S. 103; 25 J. P. 484; 7 Jur. N. S. 323; 9 W. R. 393; 45 E. R. 818, C. A.

Annotations :—*Appld. North v. Huber* (1861), 30 L. J. Ch. 666. *Mentd. Williams v. Smith & Casse* (1863), 2 New Rep. 280.

1048. ——Deft. had been committed for contempt in not producing documents pursuant to an order. It appeared that he had deposited the documents in question as a security for money advanced prior to the institution of the suit & was unable, by reason of poverty, to redeem them. He moved to be discharged from custody :—*Held* : deft. must be discharged, as the documents were not in his possession or power & he had no means of producing them.—*NORTH v. HUBER* (1861), 29 Beav. 437; 30 L. J. Ch. 666; 25 J. P. 484; 7 Jur. N. S. 767; 54 E. R. 696.

1049. ——*PARTIDGE v. SMILES* (1907), 51 Sol. Jo. 728.

1050. — Death of sole plaintiff—While defendant remaining in prison.—*TERRELL v. SOUCH* (1845), 4 Hare, 535; 10 Jur. 328; 67 E. R. 760.

Compare No. 1056, post.

1051. — Improper conduct of plaintiff.—An order was made by the ct. for the sale of certain lands, & an application was made by P. to the vendors' solr., to become purchaser of part of the premises, & a contract was entered into, whereby the vendors agreed to sell & the purchaser to pur-

chase for £100. The purchaser also agreed to obtain an order of the ct. confirming the sale, & in default that the vendors might obtain such an order at the purchaser's expense. On the same day the purchaser gave a written retainer to the vendors' solr. to act as his attorney. The purchaser was a marksman, & both instruments were witnessed by the same solr. Afterwards an order was obtained confirming the purchase, & ordering payment of the money into ct. The purchaser, finding a good title could not be made, failed to pay the purchase money, whereupon another order was obtained for payment, in default of which the purchaser was attached & committed to prison :—*Held* : the attachment must be set aside & prisoner discharged. *BROMAGE v. DAVIES, BROMAGE v. SNEAD, Re GAMES* (1858), 31 L. T. O. S. 280; 4 Jur. N. S. 683.

Annotation :—*Mentd. Re Commonwealth Land, Building, Estate & Auction Co., Ex p. Hollington* (1873), 29 L. T. 502.

1052. When refused—All contempts not purged.—Where a party previously in contempt for disobeying an order, is taken into custody & committed for another contempt, the custody shall be held to apply to both the contempts, & both must be cleared before the party can be discharged.—*BLACKWELL v. TATLOW* (1833), 2 My. & K. 321; *Coop. temp. Brough*. 186; 3 L. J. Ch. 153; 39 E. R. 966, L. C.

1053. ——*Re J. C.* (1896), 40 Sol. Jo. 655.

1054. — When plaintiff would suffer injustice.—Where deft. is detained in custody under 1 Will. 4, c. 36, s. 15, r. 12, & his answer is necessary for the purpose of doing justice, the ct. will order him to remain in custody, although pltf. has obtained a vesting order against the estate of deft. in the Insolvent Debtors' Ct., & deft. has filed his schedule; for the Ct. will not forgo its own inherent powers, or cast aside its machinery for enforcing a discovery, upon the presumption that the necessary discovery may possibly be made in the Insolvent Debtors' Ct., by means of an examination there, which deft. may answer or not at his own option.—*MATLAND v. RODGER* (1841), 14 Sim. 92; 3 L. T. O. S. 137; 8 Jur. 371; 60 E. R. 292.

1055. ——Where deft., in contempt for not answering a bill, applies for his discharge, in consequence of the lapse of the respective periods of two months & six weeks mentioned in 1 Will. 4, c. 36, r. 13, & the bill not having been taken *pro confesso* against him, the ct., under r. 12, will not discharge but remand deft., on the application of pltf., if it be satisfied that justice will not be done unless an answer be filed by deft. to the bill.—*POTTS v. WHITMORE* (1845), 8 Beav. 317; 14 L. J. Ch. 327; 50 E. R. 125.

1056. — On death of person injured—Not when contempt to court—Not bare injury to party.—Deft. against whom attachment was granted, being brought up upon it, moved to be discharged, because the person, who was immediately injured, was dead :—*Held* : the offence he was charged with was not a bare injury to the party, but a contempt to the ct., & he would be ordered to find sureties or stand committed, but upon his offering to go before the master, & the other side consenting, he would be discharged.—*R. v. ROBERTS* (1728), 1 Barn. K. B. 130; 94 E. R. 91.

Compare No. 1050, ante.

1057. — Applicant attached while under arrest in extradition proceedings—Subsequent acquittal—Contempt not purged.—An attachment issued by the High Ct. for disobedience of an

Sect. 10.—Discharge from custody: Sub-sects. 4 & 5, A. & B.; sub-sect. 6, A.]

order of the ct. in a civil action is not an offence within the meaning of Extradition Act, 1870 (c. 52), s. 19.

A party to an action in the Ch. Div. was arrested in Paris for a crime under the Act, & while in prison in England under the warrant was served with an attachment for disobedience to an order in the action:—*Held*: the attachment was valid, & the prisoner was not entitled to his discharge until he had cleared his contempt, although he had been acquitted of the criminal charge.—*POOLEY v. WHITHAM* (1880), 15 Ch. D. 435; 50 L. J. Ch. 236; 43 L. T. 267; 29 W. R. 296, C. A.

See, also, Nos. 1030-1035, 1052, 1053, *ante*.

1058. — Applicant attached for non-payment of costs—Contempt of Court Act, 1830 (c. 36).]—Where deft., in custody under an attachment for non-payment of costs, applied to be discharged under the above Act, the ct. declined to act, its jurisdiction not being clear.—*SNOWBALL v. DIXON* (1848), 2 De G. & Sm. 9; 10 L. T. O. S. 500; 12 Jur. 471; 64 E. R. 4.

As to order of committal, *see* Sect. 6, *ante*.

Final judgment signed—Committal under Debtors Act, 1869 (c. 62), s. 6.]—See BANKRUPTCY & INSOLVENCY, Vol. V., p. 1013, No. 8520.

Contemporaneous proceedings—Action & attachment on arbitrator's award.]—See ARBITRATION, Vol. II., p. 577, Nos. 2076-2085.

Privilege as ground for discharge.]—See Sect. 8, *ante*.

SUB-SECT. 5.—THE ORDER FOR DISCHARGE.

A. In General.

1059. Necessity for.]—Where deft. is in custody for want of an appearance or of an answer, & enters his appearance or files his answer, & then tenders to pltf. the costs of his contempt, & those costs are refused, it is necessary in order that he may be discharged from his contempt that he should obtain an order for that purpose (*per* CUR.).—*GREEN v. THOMSON* (1822), 1 Sim. & St. 121; 57 E. R. 49.

Annotation:—Refd. Woodward v. Twinnale (1839), 9 Sim. 301.

1060. — Waiver by plaintiff.]—Where deft. is in contempt for want of an answer, & afterwards files it, if pltf. acts on the answer he waives the contempt, & deft. need not obtain an order to discharge it.

Deft. who puts in his answer may be discharged of his contempt either by the usual order, or by the waiver of pltf. Here he did not obtain the usual order; but pltf., by accepting & acting upon the answer, waived the contempt (*LEACH, V.-C.*).—*HOSKINS v. LLOYD* (1823), 1 Sim. & St. 393; 57 E. R. 157.

1061. — Imprisonment under Debtors Act, 1869 (c. 62), s. 4—At expiration of year.]—An order of the ct. is necessary under the above Act for the discharge of a prisoner who has been in prison a year for contempt of ct.—*Re THOMPSON'S ESTATE, NALTY v. AYLETT* (1874), 43 L. J. Ch. 721; 30 L. T. 783; 22 W. R. 857.

1062. — —.]—No order is necessary for the discharge of a prisoner in custody for contempt

under any of the exceptions contained in the above Act, where the writ of attachment has appended to it a note in the following terms: "NOTE.—This writ does not authorise an imprisonment for any longer period than one year."

This motion is wholly unnecessary. The note at the foot of the writ is a sufficient authority to the sheriff to discharge the prisoner under his custody &, as I am informed by the registrar, that note has been inserted at the foot of writs of attachment for the express purpose of rendering motions of this kind unnecessary (*NORTH, J.*).—*Re EDWARDS, BROOKE v. EDWARDS* (1882), 21 Ch. D. 230; 51 L. J. Ch. 943; 30 W. R. 656.

Abolition of imprisonment for debt generally, see Part V., *ante*; **BANKRUPTCY & INSOLVENCY**, Vol. V., pp. 1021 *et seq.*

1063. Order obtained by suppression of material facts—Set aside.]—Deft. obtained an order, as of course on filing his plea to the bill, discharging him from his contempt for not answering the bill, but suppressed the fact of his having been previously served with a notice of motion by pltf., to take the plea off the file:—*Held*: the order would be discharged.—*WILKIN v. NAINBY* (1845), 8 Beav. 465; 14 L. J. Ch. 402; 5 L. T. O. S. 473; 9 Jur. 611; 50 E. R. 183.

B. Conditional Orders.

On payment of costs.]—See Sub-sect. 6, A, *post*.

1064. General rule—Attachment illegal.]—Upon an application by prisoner to be discharged from an illegal arrest, the ct. cannot impose terms, or order the costs to be paid out of the estate.—*Ex p. HELSBY* (1832), Mont. & B. 79, L. C.

1065. On purging contempt in accordance with undertaking.]—A witness being subpoenaed to attend the examiner, tore up the subpoena & disobeyed that & a subsequent order to attend, & was committed. On motion to discharge him, on payment of costs, & an undertaking to appear before the examiner on a day named:—*Held*: B. should be appointed special examiner at the witness's expense, to take his evidence, &, on the certificate of B. of the examination had, & payment of all the costs of committal, custody, application for the discharge & examination, prisoner should be discharged.—*WALTER v. RUTTER* (1868), 18 L. T. 788.

1066. —.]—MARRYAT v. MARRYAT (1892), 36 Sol. Jo. 753; *subsequent proceedings*, 36 Sol. Jo. 761.

1067. Restraining subsequent proceedings—For false imprisonment.]—A party in custody for a contempt in disobedience to the process of the ct. will not be discharged without undertaking not to bring an action for the arrest & false imprisonment, when, by his own device, the process had been served, in point of fact, on another person of the same name.—*BLAND v. BUCKLEY* (1818), 6 Price, 34; 146 E. R. 733.

1068. — —.]—It appears to me that the just course is to order prisoner's discharge without costs if he pay the sum for the non-payment of which he is now in contempt & undertake to bring no action (*SIR J. CROSS*).—*Re BENNET, Ex p. MALACHI* (1834), 3 L. J. Bey. 86.

1069. — —.]—Where a party in custody for contempt is discharged, on the ground that

prisoned eight months, for breach of an injunction against breaking up ancient pasture lands, was discharged from custody, upon undertaking to lay them down again.—*SOULLY v. SKEHANE* (1840), Sav. & Sc. 710.—*IR.*

PART VI. SECT. 10, SUB-SECT. 5.

—A.

1059 i. Necessity for—If in custody.]—DUNCAN v. TROTT (1869), 2 Ch. Ch. 487.—*CAN.*

PART VI. SECT. 10, SUB-SECT. 5.—B.

1065 i. On purging contempt in accordance with undertaking.]—ROBERTS v. DONOVAN (1894), 16 P. R. 456.—*CAN.*

1065 ii. —.]—Deft. having been im-

the attachment is irregular, the ct. will not, in general, though it has jurisdiction to do so, make it a condition of his discharge that he shall be restrained from bringing an action for false imprisonment, but will wait till the party discharged applies for leave to bring his action.—*MORISON v. MORISON* (1846), 15 L. J. Ch. 439; *sub nom. MORRISON v. MORRISON*, 7 L. T. O. S. 367; 10 Jur. 773.

1070. Restraining further proceedings—Without leave of court.—*Re DAVIES*, No. 98, *ante*.

1071. Production of certificate of marriage with ward of court & settlement of wife's property.—The ct. refused to discharge a person who had been committed for contempt for marrying an infant ward of ct. until the certificate of the due solemnisation of the marriage had been produced, & a proper settlement of the wife's property had been approved.—*COX v. BENNETT* (1874), 31 L. T. 83; 22 W. R. 819.

See, further, INFANTS & CHILDREN.

SUB-SECT. 6.—PAYMENT OF COSTS ON DISCHARGE.

A. Whether Condition Precedent to Discharge.

See, now, Debtors Act, 1869 (c. 62), s. 4.

1072. Non-criminal contempt—Waiver by plaintiff.—*SMITH v. BLOFIELD* (1813), 2 Ves. & B. 100; 35 E. R. 257.

Annotation:—Refd. Hill v. Turner (1814), 2 Ves. & B. 372.

1073. ————*LANDARS v. ALLEN* (1834), 6 Sim. 610; 58 E. R. 725.

Annotation:—Refd. Woodward v. Twinn (1839), 9 Sim. 301.

1074. ————*STAFFORD v. BALL* (1835), 4 L. J. Ch. 249.

1075. ————*HAYNES v. BALL* (1842), 5 Beav. 140; 49 E. R. 530.

Annotation:—Consd. Oldfield v. Cobbett (1845), 1 Ph. 557.

1076. ————*OLDFIELD v. COBBETT*, No. 1038, *ante*.

1077. Contempt purged.—*R. v. HODGSON* (1735), Cooke, Pr. Cas. 121; 125 E. R. 997.

1078. ————*HURD v. PARTINGTON*, No. 1046, *ante*.

1079. ————*WILLIAMS v. NEWTON* (1840), 11 Sim. 45; 59 E. R. 790.

1080. ————*ALLIBONE v. JONES*, No. 1093, *post*.

1081. ————*CLIFTON v. RICHARDS* (1852), 20 L. T. O. S. 7.

1082. ————*MARSHMAN v. BROOKES* (1863), 32 L. J. P. M. & A. 95; 11 W. R. 549.

1071 i. Production of marriage certificate with ward of court & settlement of wife's property.—*Re STEWART* (1828), 2 Ir. L. Rec. 1st Ser. 112.—*IR.*

PART VI. SECT. 10, SUB-SECT. 6.—A.

a. Non-criminal contempt.—The ct. will not hold a party, who has been in contempt for not obeying an order, in gaol for non-payment of the costs occasioned by his contempt.—*PHERRILL v. PHERRILL* (1869), 2 Ch. Ch. 444.—*CAN.*

b. ————*When a party has been committed for not bringing in accounts, & it is shown by certificate that the accounts have since been brought in, the payment of costs will not be made a condition precedent to his discharge.*—*CLARK v. CLARK* (1870), 3 Ch. Ch. 67.—*CAN.*

c. Criminal contempt.—An order to commit to close custody for not attending to be examined pursuant to a judge's order is a commitment for contempt, not a commitment in execution, & a party committed under it is not entitled to his discharge on payment

of the debt & costs.—*HENDERSON v. DICKSON* (1861), 19 U. C. R. 592.—*CAN.*

d. ————*Where prisoner has apologised.*—Where a party is in prison for contempt, & has apologised, but has not paid the costs of his committal, the proper order to make upon a motion for his discharge is, that he be continued in prison for his contempt for a time certain, unless the costs of the proceedings against him are sooner paid.—*CAMPBELL v. MARTIN* (1886), 11 P. R. 509.—*CAN.*

e. ————*Contempt not purged.*—A prisoner committed to gaol for contempt of ct. in not producing a book which he had been ordered to produce cannot purge his contempt by showing either that the book has been burnt by some other person without his knowledge or connivance, or that he left it in a certain place & was afterwards unable to find or trace it. In such circumstances a prisoner should not be released unless he pays all the costs occasioned by his misconduct in connection with the lost book, although an application for release without such

1083. ————*BRITNELL v. WALTON* (1870), 18 W. R. 446.

1084. ————*Since Debtors Act, 1869 (c. 62), a deft. who has cleared his contempt by filing his answer cannot be detained in prison for non-payment of the costs of his contempt, but the ct. in ordering his discharge will make it part of the order that he shall pay the costs of his contempt & of the motion to discharge him.*—*JACKSON v. MAWBY* (1875), 1 Ch. D. 86; 45 L. J. Ch. 53; 24 W. R. 92.

Annotations:—Appl. Mickelthwait v. Fletcher (1879), 27 W. R. 793. *Consd. Weldon v. Weldon* (1885), 52 L. T. 233; *Buckley v. Crawford*, [1893] 1 Q. B. 105; *Re Evans, Evans v. Noton* (1893), 68 L. T. 324. *Fold. Ayres v. Ayres* (1901), 71 L. J. P. 18.

1085. ————*Practice of Chancery Division.*—On an application to discharge prisoner in custody under Debtors Act, 1869 (c. 62), for non-payment of a sum ordered to be paid by him as a trustee, it is not the practice in the Ch. Div. to make payment of the costs of his contempt a condition precedent to his discharge.—*Re JARVIS, WARD v. JARVIS*, [1886] W. N. 118.

Annotation:—Refd. Ayres v. Ayres (1901), 71 L. J. P. 18.

1086. ————*CLARK v. DYSON* (1882), 20 Sol. Jo. 731.

Annotation:—Refd. Ayres v. Ayres (1901), 71 L. J. P. 18.

1087. ————*KIBBLE v. FAIRTHORNE* (1895), 39 Sol. Jo. 742.

1088. ————*Where a husband who has been attached & imprisoned for contempt of ct. in failing to obey an order of the ct. to pay or secure a sum of money for his wife's costs in a suit brought by her for judicial separation, has afterwards obeyed the order, he is entitled to be released from custody. The ct. will order him to pay all his wife's costs, incurred with respect to the motions for attachment & release, but will not make the payment of such costs a condition precedent to his release.*—*AYRES v. AYRES* (1901), 71 L. J. P. 18; 85 L. T. 648; 18 T. L. R. 2.

1089. Criminal contempt—Failure to pay costs on conditional order for release—Contempt not purged.—A person was committed to prison for contempt of ct. in breaking an order not to communicate with a ward of ct. An order was made that on paying certain costs the prisoner should be released. He failed to pay the costs:—*Held: inasmuch as he had not purged his contempt he was not, under Debtors Act, 1869 (c. 62), in prison for debt, or entitled to be released.*—*S. v. L.,*

payment might be entertained if it were shown that, by reason of poverty such costs could not be paid.—*COTTER v. OSBORNE* (1907), 17 Man. L. R. 248.—*CAN.*

f. ————*Where contempt purged.*—A constable, who seized goods under a justice's warrant, was served with a rule nisi for a writ containing an order for stay of proceedings, but he sold the goods:—*Held: (1) he was guilty of contempt of ct.; (2) as he had made restitution, & paid the costs of the application, he would be discharged from custody.*—*Ex p. LOANE, Ex p. GROVES* (1883), 22 N. B. R. 629.—*CAN.*

g. ————*Where the ct. considers that a prisoner in custody for contempt of ct. has sufficiently purged his contempt, & is satisfied with his undertaking as to his future conduct, it will not make the payment of the costs incurred by the ct. attachment & discharge a condition precedent to the order for his discharge.*—*CLARKE v. SMITH* (1914), 48 I. L. T. 244.—*IR.*

Sect. 10.—Discharge from custody: Sub-sect. 6, A. & B. Part VII. Sect. 1: Sub-sects. 1 & 2.]

[1876] W. N. 220; *affd. sub nom. Re M—*, 46 L. J. Ch. 24, C. A.

Annotations:—Consd. Weldon v. Weldon (1885), 52 L. T. 233. *Distd. Ayres v. Ayres* (1901), 71 L. J. P. 18.

When defendant without means.—*See Nos. 1092, 1094, post.*

B. Other Cases.

1090. Who may be liable for—Not infant.—Deft., an infant, being brought up by the messenger to have a guardian assigned him to answer & defend a suit, it was prayed that he might not be discharged, & that he might pay the costs:—*Held*: an infant, deft., paid no costs of a contempt.—*PERKINS v. HAMOND* (1746), Dick. 287; 21 E. R. 279, L. C.

See, further, INFANTS & CHILDREN.

1091. Conditional order as to payment—On defendant committing further offence.—*WOODBURN v. FISHER* (1844), 4 L. T. O. S. 249, L. C.

Conditional orders of discharge generally, *see Sub-sect. 5, B., ante.*

1092. Defendant without means—Committed prior to obtaining leave to sue in formâ pauperis—Discharged without payment.—Independently of Contempt of Ct. Act, 1830 (c. 36), the ct. has power to discharge a pauper deft. who had been committed for contempt prior to his obtaining permission to sue *in formâ pauperis*, without his first paying the costs of the contempt, on his undertaking to abide by such order as the ct. may make respecting such costs.—*BENNETT v. CHUD-LEIGH* (1843), 2 Y. & C. Ch. Cas. 164; 7 Jur. 166; 63 E. R. 72.

Annotations:—Distd. Snowball v. Dixon (1848), 2 De G. & Sm. 9; *Hall v. Hall* (1871), L. R. 11 Eq. 290.

1093. — Effect of subsequent order to defend in formâ pauperis.—Where deft., who is in contempt for not answering, puts in his answer without payment of costs, a subsequent order that he may defend *in formâ pauperis* will not relieve him from the payment of costs then already incurred, & he can only be discharged from custody under Bkpcy. Act, 1842 (c. 122).—*ALLIBONE v. JONES* (1844), 13 L. J. Ch. 408; *sub. nom. REED*

v. PIKE (1844), 3 L. T. O. S. 409; *sub. nom. REED v. PIKE, ALLIBONE v. JONES*, 8 Jur. 678, L. C.; *subsequent proceedings, sub. nom. REED v. PIKE, ALLIBONE v. JONES* (1845), 4 L. T. O. S. 350, L. C.

1094. — Costs paid out of suitors' fund.—A motion was made that deft., who had been committed for contempt in not putting in his answer, should be discharged, & the costs of the answer paid out of the suitors' fund, the poverty of deft. having been the reason his answer was not made in due time:—*Held*: an order would be granted accordingly.—*ROBEY v. WHITEHEAD* (1844), 2 L. T. O. S. 454, L. C.

1095. — Jurisdiction to order costs in the cause.—Contempt of Ct. Act, 1830 (c. 36), s. 15, r. 17, does not authorise the ct. to order that the costs of a deft.'s contempt for not answering, he being too poor to pay them, may be costs in the cause.—*ROBEY v. WHITEWOOD* (1844), 7 Beav. 54; 49 E. R. 982.

1096. — Jurisdiction to order payment of costs of plaintiff—Courts of Justice (Salaries & Funds) Act, 1869 (c. 91).—On motion on behalf of a pauper deft. in contempt that he may be discharged from custody, the ct. has no authority, under the above Act, to order the costs of pltf. upon his own application, to be provided for by the Treasury.—*HALL v. HALL* (1871), L. R. 11 Eq. 290; 23 L. T. 837; 19 W. R. 467.

1097. — No order made as to costs.—*WEST HAM CORPN. v. CUNNINGHAM* (1906), *Times*, Oct. 12.

1098. Liability of plaintiff for—Defendant arrested in breach of privilege.—A sheriff's officer, notwithstanding an admonition as to the illegality of the proceeding, arrested a solr. while on his way to ct. to conduct a case for a client. On a motion to discharge the solr. from custody:—*Held*: the parties served with notice of motion, namely, the sheriff, the sheriff's officer & pltf., at whose instance the arrest was effected, must pay the costs of such application.—*DODD v. HOLBROOK, Re PITTMAN* (1865), 35 L. J. Ch. 175; 13 L. T. 426; 11 Jur. N. S. 969; 14 W. R. 125.

Annotations:—Consd. Hayos v. Bagwell (1870), 18 W. R. 470. *Mentd. Re Preston* (1883), 52 L. J. Q. B. 545.

Privilege from arrest, *see Part VI., Sect. 8, ante.*

Part VII.—Position of Party in Contempt.

SECT. 1.—WHEN PARTY IN CONTEMPT WILL BE HEARD OR BE ALLOWED TO PROCEED.

SUB-SECT. 1.—GENERAL RULE.

1099. General rule—Discretion of court—Disobedience to order for payment of alimony.—*LEAVIS v. LEAVIS*, No. 401, *ante.*

1100. Not till contempt purged.—On a question whether deft. could be heard before he had cleared his contempts, though he offered to pay all the pltf.'s demands, it was ordered that he should bring before the master all the principal, interest & costs, & then be at liberty to move to have his sequestration discharged.—*WENMAN (LORD) v. OSBALDISTON* (1719), 2 Bro. Parl. Cas. 276; 1 E. R. 941, H. L.

1101. — & payment of costs.—If pltf. obtains an injunction upon deft.'s being in contempt for want of his answer, deft. is not entitled

to an order to dissolve the injunction unless cause, barely upon putting in his answer, but he must also have paid the costs of the contempt.—*HALL v. DARNEY* (1756), Dick. 289; 21 E. R. 279, L. C.

1102. ——The general rule is that parties must clear their contempt before they can be heard.—*VOWLES v. YOUNG* (1803), 9 Ves. 172; 32 E. R. 567, L. C.

Annotations:—Mentd. Price v. Dewhurst (1839), 4 My. & Cr. 282; *Jones v. Creswicke, Booth v. Creswicke* (1841), 5 Jur. 763.

1103. ——A. filed a bill against B. which B. answered, & then filed a cross-bill against A. A. not having answered the cross-bill B. issued an attachment against him, but was unable to serve it as A. was resident abroad. A. proceeded to examine witnesses in his cause:—*Held*: the ct. would order publication not to pass in A.'s suit until he should have put in his answer & have

PART VII. SECT. 1, SUB-SECT. 1.

11001. Not till contempt purged—Disobedience to order for payment of

alimony.—Where resp. was guilty of contempt of ct. in failing to comply with an order which directed him to pay alimony to petitioner, all proceed-

ings on his cross-petition were stayed until he should purge such contempt.—*ANNESLEY v. ANNESLEY* (1913), 47 L. L. T. 207.—*IR.*

cleared his contempt in B.'s suit & the ct. should order publication to pass.—*PALMER v. LEYCESTER* (1834), 6 Sim. 610; 58 E. R. 722.

1104. —[—]—An application for maintenance of wards of ct. was refused when the party applying was acting in contempt of the orders of the ct.—*CAMPBELL v. CAMPBELL* (1837), 1 Jur. 540, L. C.

1105. —[—]—In contempt for non-payment of costs.—Motion to restrain deft. from cutting timber. An objection was taken to pltf. being heard, he being in contempt for non-payment of costs:—*Held*: the motion would be refused.

The general rule is that a party cannot make a motion when in contempt for non-payment of costs, & it is important to adhere to that rule (LORD LYNTHURST, C.).—*HERRING v. CLOBBERRY* (1844), 3 L. T. O. S. 258, L. C.

1106. —[—]—*NEEDHAM v. NEEDHAM*, No. 1119, *post*.

1107. —[—]—*REEVE v. HODSON* (1853), 10 Hare (App. II.), xli; 68 E. R. 1138.

Annotation:—*Mentd.* *Re Youngs, Doggett v. Revett* (1885), 31 Ch. D. 239.

1108. —[—]—Where a party prosecuting proceedings is in contempt for not paying costs the proceedings will be stayed.—*Re YOUNGS, DOGGETT v. REVETT* (1885), 31 Ch. D. 239; 55 L. J. Ch. 371; 54 L. T. 50; 34 W. R. 290.

Annotations:—*Follid.* *Re Neal, Weston v. Neal* (1886), 31 Ch. D. 437. *Consd.* *Re Wickham, Marony v. Taylor* (1887), 35 Ch. D. 272; *Graham v. Sutton, Carden*, [1897] 2 Ch. 367.

1109. —[—]—Time for application to stay proceedings.—Where pltf. is in contempt through breach of an order for payment of the costs of an application in the action, the ct. will, at the instance of deft., upon the action being called on for trial, stay all further proceedings until pltf. has cleared his contempt. An application for payment prior to the case being called on is not necessary.—*Re NEAL, WESTON v. NEAL* (1886), 31 Ch. D. 437; 55 L. J. Ch. 376; 54 L. T. 68; 34 W. R. 319.

Annotations:—*Consd.* *Re Wickham, Marony v. Taylor* (1887), 35 Ch. D. 272; *Graham v. Sutton, Carden*, [1897] 2 Ch. 367.

See, now, Debtors Act, 1869 (c. 62), s. 4.

1110. —[—]—A party who is in contempt for non-compliance with an order of the ct. cannot be heard, except for the purpose of purging the contempt.—*GARSTIN v. GARSTIN* (1865), 4 Sw. & Tr. 73; 34 L. J. P. M. & A. 45; 13 W. R. 508; 164 E. R. 1443.

Annotations:—*Follid.* *Cavendish v. Cavendish & Rochefoucauld* (1866), 15 W. R. 182. *Reid.* *Gordon v. Gordon*, [1904] P. 163.

1111. —[—]—Resp., who is in contempt for non-compliance with an order of the ct. directing her to give up the custody of a child, cannot be heard to move for a new trial, or for any other purpose, until she has purged the contempt by obeying the order of the ct.—*CAVENDISH v. CAVENDISH & ROCHEFOUCAULD* (1866), 15 W. R. 182.

1112. —[—]—*Re LANGWORTHY* (1887), 3 T. L. R. 826, C. A.

1113. —[—]—Party able to comply with orders.—*LEAVIS v. LEAVIS*, No. 401, *ante*.

SUB-SECT. 2.—TO GET RID OF CONTEMPT OR CONTEST IRREGULARITY IN PROCESS.

1114. Motion to discharge order.—You may move to discharge an order though you are in

contempt for not obeying it (LORD KING, C.).—*HILL v. BISSET* (1730), Mos. 258; 25 E. R. 383, L. C.

1115. —[—]—On ground of irregularity in process of committal.—A party may be heard to show irregularities in the process upon which he is committed, although he has not obeyed the order in respect of which the process was issued.—*GREEN v. GREEN* (1828), 2 Sim. 394; 1 Coop. temp. Cott. 206; 57 E. R. 836.

1116. —[—]—A party against whom an attachment has issued for disobedience to an order may, notwithstanding the attachment, move to discharge the order.—*BROWN v. NEWAIL* (1837), 2 My. & Cr. 558; 40 E. R. 752, L. C.

Annotations:—*Mentd.* *Small v. Attwood* (1838), 3 Y. & C. Ex. 105; *Haig v. Homan* (1841), 8 Cl. & Fin. 320; *Hanson v. Keating* (1844), 4 Hare, 1; *Humphries v. Horne* (1844), 3 Hare, 276.

1117. —[—]—(1) Pltf. is entitled to sue out an attachment against deft. for want of answer although he is himself in custody for a contempt in non-payment of costs.

(2) Although it may be generally true that a party in contempt cannot be heard to make a motion, he is nevertheless permitted to be heard upon a motion to get rid of that contempt. (3) It is also well settled that if a party in contempt is brought into ct. by any proceedings taken against him he has a right to be heard in his defence & in opposition to those proceedings (LORD COTTENHAM, C.).—*WILSON v. BATES* (1838), 3 My. & Cr. 197; 7 L. J. Ch. 131; 2 Jur. 319; 40 E. R. 900, L. C.; *affg.* *S. C. sub nom.* *BATES v. WILSON*, 2 Jur. 107.

Annotations:—*As to* (1) *Appl.* *Plumbe v. Plumbe* (1839), 3 Y. & C. Ex. 622. *Consd.* *Reeve v. Hodson* (1853), 10 Hare, App. 11, xli. *Appl.* *Chatterton v. Thomas* (1867), 36 L. J. Ch. 592. *Reid.* *Re Wickham, Marony v. Taylor* (1887), 35 Ch. D. 272. *As to* (2) *Consd.* *Wilkin v. Nainby* (1845), 4 Hare, 473. *Reid.* *Bradbury v. Shawe* (1850), 14 Jur. 1042; *Re Madrid & Valencia Ry., Ex p. Chadwick* (1850), 16 L. T. O. S. 166. *As to* (3) *Consd.* *Morrison v. Morrison* (1845), 4 Hare, 590. *Reid.* *Everett v. Prythergh* (1841), 12 Sim. 363; *Taylor v. Taylor* (1849), 1 Mac. & G. 397. *Generally.* *Mentd.* *Sprye v. Roynell* (1852), 21 L. J. Ch. 664; *Morton v. Palmer* (1882), 9 Q. B. D. 89.

1118. —[—]—*PARRY v. PERRYMAN*, No. 1123, *post*.

1119. —[—]—Rehearing on payment of costs of former application.—Though deft. who is in contempt for non-payment of costs is entitled to be heard on an application to discharge the very order in respect of which he is in contempt, that does not entitle him to apply for a second rehearing until the costs awarded against him on the first have been paid.—*NEEDHAM v. NEEDHAM* (1845), 1 Coop. temp. Cott. 208; 4 L. T. O. S. 309; 47 E. R. 821, L. C.; *subsequent proceedings* (1846), 1 Ph. 640, L. C.

1120. —[—]—A party is entitled to be heard, if his object is to get rid of the order or other proceeding which placed him in contempt, & he is also entitled to be heard for the purpose of resisting or setting aside for irregularity any proceedings subsequent to his contempt, but he is not generally entitled to take a proceeding in the cause for his own benefit (LORD COTTENHAM, C.).—*CHUCK v. CREMER* (1846), 1 Coop. temp. Cott. 205; 47 E. R. 820, L. C.; *subsequent proceedings*, 1 Coop. temp. Cott. 247, 338, L. C.

Annotation:—*Consd.* *Gordon v. Gordon*, [1904] P. 163.

1121. Motion for commission to take answer.—Defendant in custody for want of answer.—A motion may be made without consent, by deft. in

PART VII. SECT. 1, SUB-SECT. 2.

h. General rule.—Deft. in contempt may be heard to point out an irregularity or impropriety, & will be entitled to costs.—*VALLE v. O'REILLY*

(1824), 1 Hog. 199.—*IR.*

k. —[—]—A party in contempt is disentitled generally to move for any purpose except to show irregularity in the service or process.—*HOWARD v. NEWMAN* (1828), 1 Mol. 221.—*IR.*

l. —[—]—A party who is in contempt for disobedience of an order of ct., can be heard only to show irregularity in the order.—*MADDEN v. WOODS* (1845), 7 L. Eq. R. 637.—*IR.*

Sect. 1.—When party in contempt will be heard or be allowed to proceed: Sub-sects. 2, 3, 4, 5 & 6.]

custody upon an attachment for want of an answer, for a commission to take his answer, etc.—*MAINWARING v. WILDING* (1818), 3 Madd. 41; 56 E. R. 424.

Order for attachment or committal generally, see Part VI., Sect. 6, *ante*.

Discharge from custody, see Part VI., Sect. 10, *ante*.

SUB-SECT. 3.—TO DEFEND PROCEEDINGS TAKEN AGAINST HIM.

1122. General rule.]—*WILSON v. BATES*, No. 1117, *ante*.

1123. —.]—You cannot, being in contempt, be heard here upon other matters. That is the general rule, to which there are some exceptions. One exception is where the party in contempt is merely protecting himself. He may be heard to that extent, & no further. But there is nothing to prevent you taking what steps you please if your object be confined to getting rid of whatever has placed you in contempt (*LORD LANGDALE, M.R.*).—*PARRY v. PERRYMAN* (1838), 1 Coop. temp. Cott. 207; 47 E. R. 821.

1124. —.]—Deft., though in contempt, is entitled to take any measures that may be necessary for his defence.—*FRY v. ERNEST* (1863), 3 New Rep. 63; 9 L. T. 321; 9 Jur. N. S. 1151; 12 W. R. 97.

1125. Defendant may plead answer & demur.]—*SCARBOROUGH CORPN. v. JACKSON* (1728), Bunb. 251; 145 E. R. 664.

1126. In forma pauperis.]—Motion, upon the usual affidavit, that deft. might be admitted to defend in *forma pauperis*. It appeared that this was upon an attachment for a contempt, & not a cause in ct.:—*Held*: the motion would be denied.—*R. v. PEARSON* (1760), 2 Burr. 1039; 97 E. R. 695.

1127. — Only to clear contempt.]—An order was made that deft., in contempt for non-payment of costs, might appear in *forma pauperis*, for the sole & limited purpose of clearing his contempt.—*OLDFIELD v. COBBETT* (1844), 1 Coll. 169; 13 L. J. Ch. 177; 3 L. T. O. S. 3; 8 Jur. 352; 63 E. R. 369; *subsequent proceedings*, 3 L. T. O. S. 433, L. C.

SUB-SECT. 4.—TO APPEAL AGAINST ORDERS SUBSEQUENT TO CONTEMPT.

1128. General rule.]—(1) The general rule that a person who is in contempt cannot be heard to make any application to the ct., applies *prima facie* to voluntary applications by him, i.e., when he comes to the ct. asking for something.

(2) The rule does not prevent a person who is in contempt from appealing against an order, made after the contempt was committed, on the ground that the order was made without jurisdiction.—*GORDON v. GORDON*, [1904] P. 163; 73

L. J. P. 41; 90 L. T. 597; 52 W. R. 389; 20 T. L. R. 272; 48 Sol. Jo. 297, O. A.

Annotation:—Mentd. Re Wingfield & Blew, [1904] 2 Ch. 665.

1129. On ground of irregularity.]—Pltf. obtained against deft., who was in contempt, an order for payment of a sum of money into ct.:—*Held*: deft., though in contempt, might move to discharge that order.—*PARKER v. DAWSON* (1836), 5 L. J. Ch. 108, L. C.

Annotation:—Re Madrid & Valencia Ry., Ex p. Chadwick (1850), 16 L. T. O. S. 166.

1130. —.]—A party in contempt is entitled to be heard in ct. to show that proceedings against him, subsequent to the order placing him in contempt, have been irregular.

The ct. will not hear a party in contempt coming himself into ct. to take any advantage of proceedings in the cause, but such a party is entitled to appear, notwithstanding, & resist any proceedings taken against him (*LORD COTTENHAM, C.*).—*KING v. BRYANT* (1838), 3 My. & Cr. 191; 7 L. J. Ch. 167; 2 Jur. 106; 40 E. R. 897, L. C.

Annotations:—Consd. Morrison v. Morrison (1845), 4 Hare, 590; *Wilkin v. Nainby*, 4 Hare, 473. *Re Madrid & Valencia Ry., Ex p. Chadwick* (1850), 16 L. T. O. S. 166. *Mentd. Golden v. Newton* (1860), John. 720.

1131. —.]—A party in contempt for non-payment of costs, & being served with an order *nisi* to confirm a report, may, notwithstanding his contempt, take exceptions to the report, & draw up, pass, & enter an order to set down the exceptions; & may also present, & be heard upon, his petition to discharge the report as irregular, & for liberty to open the accounts allowed in former reports, on the ground that items therein were allowed in the absence of petitioner, & while the suit was abated.—*MORRISON v. MORRISON* (1845), 4 Hare, 590; 9 Jur. 103; 67 E. R. 783; *subsequent proceedings sub. nom. MORISON v. MORISON* (1846), 15 L. J. Ch. 439.

1132. —.]—*CHUCK v. CREMER*, No. 1120, *ante*.

1133. —.]—B. was in contempt for not appearing before the master & producing certain documents. Notice was given of a proceeding before the master to charge him with a sum alleged to have been received by him, & he was there heard by counsel:—*Held*: he might be heard on his appeal against the master's decision.—*RE MADRID & VALENCIA RY. CO., Ex p. CHADWICK* (1850), 16 L. T. O. S. 166; 15 Jur. 597.

Annotations:—Mentd. Re Bank of Gibraltar & Malta (1865), 11 Jur. N. S. 916; *Re Mercantile Trading Co., Stringer's Case* (1869), 4 Ch. App. 475.

1134. For want of jurisdiction.]—*GORDON v. GORDON*, No. 1128, *ante*.

1135. For second rehearing—When costs of first rehearing unpaid.]—*NEEDHAM v. NEEDHAM*, No. 1119, *ante*.

Appeal.]—See Part VI., Sect. 9, ante.

SUB-SECT. 5.—TO TAKE ADVANTAGE OF PROCEEDINGS IN THE CAUSE.

1136. General rule.]—A mtgor., deft. to a bill of foreclosure, being in contempt, cannot obtain the

PART VII. SECT. 1, SUB-SECT. 3.

1122 i. General rule.]—A party, though in contempt, is always allowed to take any defensive proceedings in the cause.—*MITCHELL v. MITCHELL* (1875), 22 Gr. 23.—*CAN.*

1122 ii. —.]—The rule is not universal that persons guilty of contempt can take no step in the action; a party, notwithstanding his contempt, is entitled to take the necessary steps to defend himself.—*SMALL v. AMERICAN FEDERATION OF MUSICIANS* (1903), 23 C. L. T. 188; 5 O. L. R. 456.—*CAN.*

m. — May appeal from order alleged to have been disobeyed.]—The rule that a party to an action guilty of contempt can take no step, is subject to several exceptions, & one of these is that the party is entitled to prosecute an appeal from the order or judgment which it is alleged he has been guilty of disobeying.—*COPELAND-CHATTERSON CO. v. BUSINESS SYSTEMS, LTD.* (1907), 9 O. W. R. 390; 14 O. L. R. 337.—*CAN.*

n. — Contempt a bar to asking court for indulgence.]—The fact that a

party to an action is in contempt is no bar to his proceeding with the action in the ordinary way: the contempt is only a bar to his asking the ct. for an indulgence.—*FERGUSON v. ELGIN COUNTY* (1893), 15 P. R. 399.—*CAN.*

o. May obtain time to answer.]—When a party is in contempt, he may, notwithstanding, obtain time to answer, & an order to stay the entering of further process, but he must pay the costs of the motion.—*COOKE v. DE MONTMORENCY* (1824), 1 Hog. 181.—*IR.*

usual reference to take accounts on motion under Mortgage Act, 1733 (c. 20).

I disavow all discretion except a judicial discretion, but I cannot put this construction upon the statute, that a party in contempt can claim the relief given by it as if he were not in contempt. The effect of the contempt, according to the law of every ct., is that deft. cannot come in upon this motion (LORD ELDON, C.).—HEWITT v. M'CARTNEY (1807), 13 Ves. 560; 33 E. R. 404, L. C.

1137. —.]—KING v. BRYANT, No. 1130, *ante*.

1138. —.]—In a suit for a divorce *a mensâ et thoro* a decree of confrontation was issued, for the wife, who had eloped to America, to appear to be identified, when her proctor tendered a defensive allegation. The Arches Ct. of Canterbury rejected the allegation as she was in contempt by reason of her non-appearance to the decree of confrontation. On appeal to the Judicial Committee of the Privy Council:—*Held*: this rejection would be affirmed.

It is the general rule of all cts. that no party shall be allowed to take active proceedings if in contempt. It appears to us not merely the right of the party to object to the admission of this defensive allegation but it is the right of the ct. (LORD BROUGHAM).—CURTIS v. CURTIS (1816), 5 Moo. P. C. C. 252; 10 Jur. 165; 13 E. R. 487, P. C.

Annotation:—*Reid*. Cavendish v. Cavendish & Rochefoucauld (1866), 15 W. R. 182.

1139. —.]—CHUCK v. CREMER, No. 1120, *ante*.

1140. May not move—Though not in contempt when notice of motion given.]—Deft. cannot make a motion, if he is in contempt at the time when the motion is made, though he was not in contempt when the notice of motion was given.—A.-G. v. ELLISON (1829), 7 L. J. O. S. Ch. 162.

1141. — When in contempt for non-appearance—Without entering conditional appearance.]—On a motion made on behalf of deft. who is in contempt for want of appearance, deft. cannot be heard without entering a conditional appearance with the registrar, to be void if the application should succeed, & good, if it should fail.—DAVIDSON v. HASTINGS (MARCHIONESS) (1838), 2 Keen, 509; 7 L. J. Ch. 215; 2 Jur. 404; 48 E. R. 723.

Annotations:—*Mentd*. Blackstone v. Laurie (1845), 2 Holt, Eq. 23; Carron Iron Co. v. McLaren (1855), 5 H. L. Cas. 416.

1142. — For security for costs.]—Deft. in contempt for want of answer, & against whom an attachment is sealed, is not in a situation to move for an order that pltf. shall give security for costs.—TRIVANION v. SARGON (1839), 8 L. J. Ch. 207; 3 Jur. 121.

1143. May bring cause to hearing.]—Deft. cannot object to a cause being heard on the ground that pltf. is in contempt.—RICKETTS v. MORNINGTON (1834), 7 Sim. 200; 4 L. J. Ch. 21; 58 E. R. 813.

Annotations:—*Consd*. Wilson v. Bates (1838), 3 My. & Cr. 197. *Reid*. *Re* Wickham, Marony v. Taylor (1887), 35 Ch. D. 272.

1144. May proceed with cause—Enforcement of order.]—The ct. will not withhold the enforcement of its order by reason that the party obtaining such order is in contempt of the Ct. of K. B.—GREENHILL v. GREENHILL (1836), 1 Curt. 462; 163 E. R. 162.

Annotations:—*Reid*. Morse v. Morse (1846), 5 Notes of Cases, 49. *Mentd*. Hope v. Hope (1854), 18 Jur. 1086.

1145. — Attachment to compel answer.]—WILSON v. BATES, No. 1117, *ante*.

1146. — Motion for production of documents.]—Pltf., though under an attachment for non-payment of costs in the original cause, being entitled to compel an answer to his supplemental bill, is also entitled to move for the production of papers referred to in the answer to such supplemental bill.—PLUMBE v. PLUMBE (1839), 3 Y. & C. Ex. 622; 9 L. J. Ex. Eq. 9; 3 Jur. 1144; 160 E. R. 850; *subsequent proceedings* (1840), 10 L. J. Ex. Eq. 2.

1147. — Amending pleadings.]—Pltf., while in contempt for non-payment of the costs of a demurrer, cannot, under colour of amending a former bill, proceed against the demurring party for the same matter, & in order to judge of this the ct. will look into the amended bill to see whether it contains the same matter as the bill demurred to.—CRAWFORTH v. HOLDER (1840), 3 Y. & C. Ex. 718; 160 E. R. 891.

1148. — —.]—Pltf., who was in contempt for previous costs, moved to amend after replication by adding a party whom he knew to be a necessary party for two years past:—*Held*: he would be ordered to pay the costs of his application as a condition precedent to his obtaining the order, & to undertake to amend in three days, without prejudice to deft. moving to speed the cause.—PLUMB v. PLUMB (1810), 10 L. J. Ex. Eq. 2.

1149. — —.]—Pltf. in contempt is at liberty to proceed with the cause in the ordinary way, & therefore a special order for leave to amend will be granted to pltf. in contempt.—CHATTERTON v. THOMAS (1867), 36 L. J. Ch. 592.

Annotation:—*Reid*. Gordon v. Gordon (1904), 52 W. R. 389.

1150. — By filing replication.]—Pltf. in contempt may file a replication, & the replication so filed is an answer to a motion to dismiss his bill for want of prosecution.—STORY v. NATIONAL INSURANCE & INVESTMENT SOCIETY (OFFICIAL MANAGER) (1863), 2 New Rep. 351; 8 L. T. 531.

1151. May proceed with taxation of costs.]—A party to whom costs are awarded may proceed in the taxation notwithstanding he may be in contempt.—NEWTON v. RICKETTS (1818), 11 Beav. 67; 10 L. T. O. S. 517; 50 E. R. 742.

1152. May not apply for costs of abandoned motion.]—ELLICE v. WALMSLEY (1835), 1 Coop. temp. Cott. 207; 4 L. J. Ch. 161; 47 E. R. 821.

SUB-SECT. 6.—APPLICATIONS IN DIFFERENT PROCEEDINGS.

1153. Though between same parties.]—*Scemle*: a party who is in contempt for disobedience to an order in a cause is not thereby precluded from making a motion in another cause having reference to a distinct subject, though between precisely the same parties.—CLARK v. DEW (1829), 1 Russ. & M. 103; 39 E. R. 40, L. C.

1154. —.]—A suit was instituted on behalf of infants against the tenant for life & three trustees in respect of a breach of trust. The bill being taken *pro confesso*, a decree was made against the trustees for the payment of a large sum in respect of the breach of trust. One of the trustees, who was abroad & in contempt for non-performance

PART VII. SECT. 1, SUB-SECT. 5.

1144 i. May proceed with cause—Enforcement of decree.]—Pltf. prosecuting his decree is entitled to do so, notwithstanding he may have been

placed in contempt for disobedience to an order of the ct. for payment of money.—HURD v. ROBERTSON (1857), 1 Ch. Ch. 3.—CAN.

1144 ii. — — Stay by defendant

until plaintiff's contempt purged.]—Where pltf. prosecutes his decree while in contempt, deft. must obtain an order staying proceedings until the contempt is purged.—HURD v. ROBERTSON (1857), 1 Ch. Ch. 3.—CAN.

Sect. 1.—When party in contempt will be heard or be allowed to proceed: Sub-sects. 6 & 7. Sect. 2.]

of the decree, filed a second bill against plffs. & the other defts. in the first suit, recognising the decree in that suit, but, besides other things, which were clearly not inconsistent with the decree, seeking on the ground of fraud & collusion between the tenant for life & his co-trustees, to make the interest of the tenant for life available for the purpose of reimbursing him, plff., the liability with which he had been fixed as he alleged through the active agency of the tenant for life:—*Held*: the circumstance of plff. being out of the jurisdiction & in contempt for non-compliance with the decree made, did not prevent his filing the bill in question.—*TAYLOR v. TAYLOR* (1849), 1 Mac. & G. 397; 1 H. & Tw. 437; 14 L. T. O. S. 413; 41 E. R. 1318, L. C.

Annotation:—Mentd. *Turner v. Tepper* (1877), 46 L. J. Ch. 703.

SUB-SECT. 7. —WHEN CONTEMPT HAS BEEN WAIVED.

1155. Step taken by other side—Acceptance of answer.]—Though generally a party cannot be heard, until he has cleared his contempt, a step, taken by the other party, waives the contempt for all purposes, except the right to costs, as costs in the cause, not to be obtained by process of contempt. Acceptance of the answer therefore is a waiver of the contempt for the purpose of enabling deft. to dismiss the bill for want of prosecution.—*ANON.* (1808), 15 Ves. 174; 33 E. R. 720, L. C. *Annotations:—* *Consd.* *Oldfield v. Cobbett* (1845), 1 Ph. 557. *Refd.* *Smith v. Blofield* (1813), 2 Ves. & B. 100.

1156. — Filing cross-bill against party in contempt.]—Filing a cross-bill against a party who is in contempt in the original suit, is a waiver of such contempt on the part of the party who files it, & deft. in the cross-suit, by clearing his contempt in that suit, will clear it in both, & will be entitled to be discharged.—*BEST v. GOMPERTZ* (1837), 2 Y. & C. Ex. 582; 160 E. R. 528.

1157. —.]—A party against whom a decree was pronounced, he being at the time in contempt:—*Held*: entitled to appeal, without clearing his contempt, a writ *de contumace capiendo*, under

53 Geo. 3, c. 127, having issued against the party out of the Ct. of Ch., which was considered a waiver of the contempt.—*HARRISON v. HARRISON* (1842), 4 Moo. P. C. C. 96; 1 Notes of Cases 204; 6 Jur. 899; 13 E. R. 238, P. C.; *affg.* S. C. *sub. nom.* *HARRISON v. SPARROW*, 3 Curt. 1.

Annotations:—Mentd. *Handley v. Edwards* (1844), 4 Moo. P. C. C. 407; *A. v. B.* (1853), 1 Ecc. & Ad. 12; *N—R v. M—E.* (1853), 2 Rob. Eccl. 625; *Hall v. Wright* (1858), E. B. & E. 765; *M. v. D.* (1885), 10 P. D. 75.

1158. Allowing party in contempt to obtain decree—Motion to restrain further prosecution of proceedings.]—Deft., who had permitted plff., who had been for some time in contempt, to obtain a decree, applied to prevent the prosecution of the decree in the master's office:—*Held*: the application would be refused, but without costs.—*PRUMBE v. PLUMBE* (1844), 2 L. T. O. S. 439; 8 Jur. 165.

SECT. 2.—OTHER CASES.

1159. Whether contempt purged—Conclusiveness of report of Master of Crown Office—Grounds for review.]—(1) On attachment for a contempt, where deft. has been examined on interrogatories, & the Master of the Crown Office directed to report thereon to the ct., if he reports that deft. has cleared himself of the contempt the ct. will not enter into a discussion of the correctness of such report, unless it appear, by the interrogatories & answers, but apparently not by affidavit, that the Master has been mistaken.

(2) It is not sufficient ground for a review, that the Master's report appears contradictory to the opinion of a judge who granted the attachment.—*R. v. MORLEY* (1836), 4 Ad. & El. 849; 111 E. R. 1003.

1160. Whether counsel will be heard—On behalf of juryman fined for contempt.]—The ct. will not hear counsel for a juryman who has been fined for contempt.—*CARNE v. NICOLL* (1834), 3 Dowl. 115; 1 Scott, 68.

Annotation:—Mentd. *Muirhead v. Evans* (1857), 6 Exch. 417.

1161. May be brought up for examination—In another court.]—A party in contempt in a suit in another branch of the ct. will be ordered to be brought up if wanted for examination.—*HILL v. TRAVIS* (1852), 21 L. J. Ch. 541.

PART VII. SECT. 2.

p. Whether contempt purged.]—Where a party is in contempt for not bringing in accounts, it is a sufficient clearing of his contempt to bring in such accounts, & the sufficiency of them will not be looked into.—*CLANCY v.*

PATTERSON (1867), 2 Ch. Ch. 217.—**CAN.**

q. —.]—A prisoner committed to gaol for contempt of ct. in not producing a book which he had been ordered to produce cannot purge his

contempt by showing either that the book has been burnt by some other person without his knowledge or connivance, or that he left it in a certain place & was afterwards unable to find or trace it.—*COTTER v. OSBORNE* (1907), 17 Man. L. R. 248.—**CAN.**

CONTINGENT REMAINDERS TO COPARCENER.

See VOLUME XII.

COPYHOLDS TO COUNTY COURTS.

See VOLUME XIII.

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		<i>Courts of Referees</i>	<i>„ WORK AND LABOUR.</i>
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<i>Land Tax Commission</i>	„	LAND TAX.
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<i>Vicar-General's Court</i>	„	ECCLESIASTICAL LAW.

Part I.—What is a Court.

1. Tribunals exercising judicial functions—Local marine board.]—Wilful & corrupt false swearing before a local marine board, duly & lawfully appointed & constituted under Merchant Shipping Act, 1854 (c. 104), upon a matter material to an inquiry then being lawfully investigated by them, under Merchant Shipping Act Amendment Act, 1862 (c. 63), s. 23, is perjury.

The offence is perjury because the wilful & corrupt false swearing took place before a tribunal invested with judicial powers (*per CUR.*).—*R. v. TOMLINSON* (1866), L. R. 1 C. C. R. 49; 36 L. J. M. C. 41; 15 L. T. 188; 30 J. P. 788; 12 Jur. N. S. 945; 15 W. R. 46; 10 Cox, C. C. 332, C. C. R.

2. — Military court of inquiry.]—A ct. of inquiry, instituted by the commander-in-chief of the army, under the Articles of War, to inquire into a complaint made by an officer in the army, though not a ct. of record, nor a ct. of law, nor coming within the ordinary definition of a ct. of justice, is nevertheless a ct. duly & legally constituted & recognised in the Articles of War & Mutiny Acts; & statements, whether oral or written, made by an officer before such ct., are absolutely privileged, even though they be made *malâ fide*, & with actual malice, & without reasonable & probable cause.

Such statements are part of the minutes of the proceedings of the ct., which, when reported & delivered to the commander-in-chief, are received & held by him on behalf of the sovereign, & on grounds of public policy cannot be produced in evidence.—*DAWKINS v. ROKEBY* (LORD) (1875), L. R. 7 H. L. 744; 45 L. J. Q. B. 8; 33 L. T. 196; 40 J. P. 20; 23 W. R. 931, H. L.; *affg.* (1873), L. R. 8 Q. B. 255, Ex. Ch.

Annotations:—Apld. *Dawkins v. Saxo Weimer* (Prince Edward) (1876), 1 Q. B. D. 499. *Consd.* *Seaman v. Nethercliff* (1876), 2 C. P. D. 53. *Apld.* *Goffin v. Donnelly* (1881), 6 Q. B. D. 307. *Distd.* *Royal Aquarium & Summer & Winter Garden Soc. v. Parkinson*, [1892] 1 Q. B. 431.

Folld. Barratt v. Kearns, [1905] 1 K. B. 504. *Apld.* *Attwood v. Chapman*, [1914] 3 K. B. 275. *Folld.* *Partnership Farms v. Harvey-Smith*, [1918] 2 K. B. 405. *Refd.* *Dickerson v. Hilliard* (1874), L. R. 9 Exch. 79; *Monster v. Lamb* (1883), 11 Q. B. D. 588; *Fraser v. Balfour* (1918), 87 L. J. K. B. 1116; *Everett v. Griffiths*, [1920] 3 K. B. 163. *Mentd.* *Henwood v. Harrison* (1873), L. R. 7 C. P. 606; *Re Tufnell's Petn. of Right* (1876), 45 L. J. Ch. 731; *Grant v. Secretary of State for India* (1877), 2 C. P. D. 415; *R. v. Harrington* (1879), 48 L. J. Q. B. 300; *Hennesy v. Wright* (1888), 21 Q. B. D. 509; *Chatterton v. Secretary of State for India in Council*, [1895] 2 Q. B. 189; *Marks v. Frogley*, [1898] 1 Q. B. 888; *Fraser v. Hamilton* (1917), 33 T. L. R. 431; *Heddon v. Evans* (1919), 35 T. L. R. 612.

3. — Local military tribunals—Military Service Acts, 1916.]—The local military tribunal constituted under the above Acts, & Military Service Regulations (Amendment) Order, 1916, & the regs. annexed thereto is a judicial body, & defamatory statements made by a member in the course of proceedings before it are absolutely privileged.—*COPARTNERSHIP FARMS v. HARVEY-SMITH*, [1918] 2 K. B. 405; 88 L. J. K. B. 472; 118 L. T. 541; 34 T. L. R. 414; 16 L. G. R. 687. *Annotation:—Refd.* *Gerhold v. Baker* (1918), 35 T. L. R. 102.

4. — Select Committee of House of Commons.]—To an action of slander deft. pleaded that the statements complained of were part of the evidence given by him in the character of a witness before a Select Committee of the House of Commons:—*Held*: the statements so made were privileged, & the action would not lie.—*GOFFIN v. DONNELLY* (1881), 6 Q. B. D. 307; 50 L. J. Q. B. 303; 44 L. T. 141; 45 J. P. 439; 29 W. R. 440, D. C.

5. — County councils—Whilst hearing applications for licences.]—At a meeting of the L. C. C. held for the purpose of hearing applns. for music & dancing licences, deft. made statements defamatory of pltf's, who in an action for slander afterwards recovered a verdict & damages against him. Upon a motion by deft. for judgment or a new trial:—*Held*: though the Council

was bound to act judicially, in the sense of fairly & impartially, the meeting was not a "court," so as to entitle deft. to absolute immunity for what he had uttered at such meeting.—**ROYAL AQUARIUM & SUMMER & WINTER GARDEN SOCIETY v. PARKINSON**, [1892] 1 Q. B. 431; 61 L. J. Q. B. 409; 66 L. T. 513; 56 J. P. 404; 40 W. R. 450; 8 T. L. R. 352, C. A.

Annotations:—**Consd.** *Hodson v. Pare*, [1899] 1 Q. B. 455; *Barratt v. Kearns*, [1905] 1 K. B. 504; *Everett v. Griffiths*, [1920] 3 K. B. 163. **Refd.** *R. v. L. C. C. Re Empire Theatre* (1894), 71 L. T. 638; *Tenby Corp. v. Mason*, [1908] 1 Ch. 457; *Burr v. Smith* (1909), 78 L. J. K. B. 889; *Attwood v. Chapman*, [1914] 3 K. B. 275; *Co-partnership Farms v. Harvey-Smith*, [1918] 2 K. B. 405. **Mentd.** *R. v. Russell, Ex p. Morris* (1905), 93 L. T. 407; *R. v. L. G. B. Ex p. Arlidge* (1913), 78 J. P. 25; *R. v. L. C. C. Ex p. London & Provincial Electric Theatres*, [1915] 2 K. B. 466; *Roff v. British & French Chemical Manufacturing Co., & Gibson*, [1918] 2 K. B. 677; *Pratt v. British Medical Assocn.*, [1919] 1 K. B. 244; *Weld-Blundell v. Stephens*, [1919] 1 K. B. 520.

6. — Licensing justices.—Justices at a licensing meeting are not a ct. of summary jurisdiction.—**ROULTER v. KENT JJ.**, [1897] A. C. 556; 66 L. J. Q. B. 787; 77 L. T. 288; 61 J. P. 532; 16 W. R. 114; 13 T. L. R. 538, H. L.

Annotations:—**Distd.** *R. v. Manchester JJ.*, [1899] 1 Q. B. 571. **Consd.** *R. v. Sunderland JJ.*, [1901] 2 K. B. 357; *Attwood v. Chapman*, [1914] 3 K. B. 275. **Refd.** *R. v. Sharmman, Ex p. Denton*, [1898] 1 Q. B. 578; *Hodson v. Pare* (1899), 68 L. J. Q. B. 309; *R. v. Worcestershire JJ.*, [1900] 2 Q. B. 576; *R. v. Howard*, [1902] 2 K. B. 363; *R. v. Johnson*, [1905] 2 K. B. 59; *R. v. Southampton Licensing JJ.*, *Ex p. Cardy*, [1906] 1 K. B. 446; *R. v. Woodhouse*, [1906] 2 K. B. 501; *R. v. Lincolnshire JJ.*, [1912] 2 K. B. 413; *Huish v. Liverpool JJ.*, [1914] 1 K. B. 109. **Mentd.** *R. v. West Riding of Yorkshire JJ., Ex p. Shaw*, [1898] 1 Q. B. 503; *R. v. Staffordshire JJ.*, [1898] 2 Q. B. 231; *R. v. London & Strand Division JJ., & Dalton, Ex p. L. C. C.* (1898), 78 L. T. 559; *R. v. Nicholson*, [1899] 2 Q. B. 455; *Tynemouth Corp. v. A.-G.*, [1899] A. C. 293; *Evans v. Conway JJ.*, [1900] 2 Q. B. 224; *R. v. Russell, Ex p. Morris* (1905), 93 L. T. 407; *Whitlock v. Whyte*, [1907] 2 K. B. 526; *R. v. Allen* (1911), 81 L. J. K. B. 258; *R. v. Ashton, Ex p. Walker* (1915), 85 L. J. K. B. 27.

7. — —.—[On an application for a *certiorari* to quash a provisional licence:—**Held: certiorari** was not applicable as the justices were not sitting as a ct. of summary jurisdiction, but were sitting merely for administrative purposes & the licence was not a judicial order in respect of which *certiorari* would lie.—**R. v. SHARMAN, Ex p. DENTON**, [1898] 1 Q. B. 578; 67 L. J. Q. B. 460; 78 L. T. 320; 62 J. P. 296; 46 W. R. 367; 14 T. L. R. 269; 42 Sol. Jo. 326, D. C.]

Annotations:—**Distd.** *R. v. Bowman*, [1898] 1 Q. B. 663. My impression certainly was that the remedy by *certiorari* had not hitherto been confined within such narrow limits as *R. v. Sharmman* suggests (WILLS, J.). **Consd.** *R. v. Colman*, [1898] 1 Q. B. 802; *R. v. Nicholson*, [1899] 2 Q. B. 455; *R. v. Johnson*, [1905] 2 K. B. 59. **N.F.** *R. v. Woodhouse*, [1906] 2 K. B. 501. **Mentd.** *R. v. Manchester JJ.*, [1899] 1 Q. B. 571; *R. v. Butt, Ex p. Brooke* (1922), 38 T. L. R. 537.

8. — —.—[Licensing justices not being a ct. cannot state a case for the opinion of the High Ct. upon questions of law arising before them in the matter of granting a licence.—**R. v. BIRD, ETC., KENSINGTON JJ., Ex p. JONES** (1898), 62 J. P. 309; 42 Sol. Jo. 397, D. C.]

Annotation:—**Apld.** *Huish v. Liverpool JJ.*, [1914] 1 K. B. 109.

PART I.

6 i. Tribunals exercising judicial functions—Licensing justices—Whether disqualified by bias.—The licensing authority in I. is a "ct." & English decisions dealing with bias on the part of justices at "licensing meetings" are applicable to justices composing the licensing authority in I.—**R. (FINLATER) v. DUBLIN RECORDER & JJ.**, [1904] 2 I. R. 75; 37 I. L. T. 202.—**IR.**

6 ii. — License commissioners.—License comrs. have duties of a judicial character which on proper occasion

subject them to the superintending authority of the Superior Ct. & the proper remedy is prohibition. **KEARNEY v. DESNOYERS** (1899), Q. R. 10 K. B. 436.—**CAN.**

6 iii. — —.—[Not only is a licensing committee a judicial body in the sense that it is bound to exercise its functions with fairness & impartiality, but in the exercise of its functions it is a ct., & each of its members is a member of a ct.—**COOK v. A.-G.** (1909), 28 N. Z. L. R. 405.—**N.Z.**

15 i. — Commissioners appointed to conduct inquiry.—Comrs. appointed

9. — —.—[The confirming authority whose confirmation is, under Licensing Acts, necessary to the validity of certain classes of new licences, sit as a court.—**R. v. MANCHESTER JJ.**, [1899] 1 Q. B. 571; 68 L. J. Q. B. 358; 80 L. T. 531; 63 J. P. 360; 47 W. R. 410; 15 T. L. R. 201; 43 Sol. Jo. 278, D. C.]

Annotations:—**Apprd.** *R. v. Sunderland JJ.*, [1901] 2 K. B. 357. **Refd.** *R. v. Johnson*, [1905] 2 K. B. 59; *R. v. Woodhouse*, [1906] 2 K. B. 501. **Mentd.** *Nix & Beeston Brewery Co. v. Nottingham JJ.* (1899), 47 W. R. 628.

10. — —.—[I have come to the conclusion that the granting or refusing of a licence by the justices at the general annual licensing meeting is a judicial act (**VAUGHAN WILLIAMS, L.J.**).—**R. v. WOODHOUSE**, [1906] 2 K. B. 501; 75 L. J. K. B. 745; 95 L. T. 367; 70 J. P. 485; 22 T. L. R. 603, C. A.; *S. C. on appeal, sub nom. LEEDS CORPN. v. RYDER*, [1907] A. C. 420, H. L. **Annotations:—****Mentd.** *R. v. Jackson* (1906), 96 L. T. 77; *R. v. Mountford, Ex p. London United Tram. Co.* (1901), Ltd. (1906), 70 J. P. 511.]

11. — —.—[Licensing justices when dealing with an objection to the renewal of an old on-licence:—**Held:** not a ct. in law.—**ATTWOOD v. CHAPMAN**, [1914] 3 K. B. 275; 83 L. J. K. B. 1666; 111 L. T. 726; 79 J. P. 65; 30 T. L. R. 596. **Annotations:—****Refd.** *Co-partnership Farms v. Harvey-Smith*, [1918] 2 K. B. 405; *Everett v. Griffiths*, [1920] 3 K. B. 163.]

12. — Justices sitting in petty sessions.—Justices sitting in special petty sessions for the purpose of revising jury lists are not a ct. of summary jurisdiction, & have, therefore, no power to state a special case for the opinion of the ct. under Summary Jurisdiction Act, 1879 (c. 49), s. 33.—**HOGMAIER v. WILLESSEN OVERSEERS** (1904), 52 W. R. 651; 18 Sol. Jo. 194, D. C.]

13. — —.—[Justices sitting in petty sessions to whom the powers of a county or borough council under Cinematograph Act, 1909 (c. 30), have been delegated do not, when exercising such powers, sit as a ct. of summary jurisdiction, & they have no power to state a case for the opinion of the ct. under Summary Jurisdiction Acts.—**HUISH v. LIVERPOOL JJ.**, [1911] 1 K. B. 109; 83 L. J. K. B. 133; 110 L. T. 38; 78 J. P. 45; 30 T. L. R. 25; 58 Sol. Jo. 83; 12 L. G. R. 15, D. C. **Annotations:—****Apld.** *Newman v. Foster* (1916), 86 L. J. K. B. 360. **Mentd.** *Stott v. Gamble*, [1916] 2 K. B. 504.]

14. — —.—[A body of justices sitting as a judicial authority under Mental Deficiency Act, 1913 (c. 28), is not a ct. of summary jurisdiction, having power to state a case for the opinion of the High Ct. under the Summary Jurisdiction Acts.—**NEWMAN v. FOSTER** (1916), 86 L. J. K. B. 360; 115 L. T. 871; 80 J. P. 471; 25 Cox, C. C. 593; 15 L. G. R. 124, D. C.]

15. — Commission issued by bishop.—A commission, issued by the bishop of a diocese under Pluralities Act, 1838 (c. 106), & Pluralities Acts Amendment Act, 1885 (c. 51), to inquire into the inadequate performance of the ecclesiastical duties of any benefice, creates a judicial tribunal, & the occasion on which a witness gives evidence before the comrs. is absolutely privileged, & no

by the Govt. of another Province to conduct an inquiry constitute a ct. or tribunal within Manitoba Evidence Act, 1902.—**RE ALBERTA & GREAT WATERWAYS RY. CO.** (1910), 20 Man. L. R. 697; 18 W. L. R. 15.—**CAN.**

a. — Forum for determining validity of patent.—The Dominion Parliament provided that patents were to be subject to conditions non-compliance with which should render them void, & that the minister of agriculture or his deputy should have authority to finally determine any dispute as to

action is maintainable in respect of evidence so given.—*BARRATT v. KEARNS*, [1905] 1 K. B. 504; 74 L. J. K. B. 318; 92 L. T. 255; 53 W. R. 356; 21 T. L. R. 212, C. A.

Annotation.—*Reid*. Copartnership Farms v. Harvey-Smith, [1918] 2 K. B. 405.

16. Not ecclesiastical tribunal of non-established church.—The Church of England, in places where there is no church established by law, is in the same situation with any other religious body, & the members may adopt, as the members of any other communion may adopt, rules for enforcing discipline within this body, which will be binding on those who expressly or by implication have assented to them. Where any religious or other lawful assocn. has not only agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the assocn. have been violated or not & what shall be the consequence of such violation, the decision of such tribunal will be binding when it has acted within the scope of its authority, has observed such forms as the rules require, if any forms be prescribed &, if not, has proceeded in a manner consonant with the principles of justice. Such tribunals are not in any sense cts., they derive no authority from the Crown, they have no power of their own to enforce their sentences; they must apply for that purpose to the cts. of law who will give effect to their decisions as to those of arbitrators whose jurisdiction rests entirely upon the consent of the parties.

Letters patent, empowering a bishop to perform all the functions appropriate to the office of a bishop in a colony, do not confer power to convene a meeting

of clergy & laity to be elected in a manner prescribed by him for the purpose of making laws binding on churchmen. Such a meeting is not a synod & has no authority, without the consent of the Crown or the colonial legislation, to bind persons without their assent by any constitutions or rules or to establish cts. having jurisdiction in temporal matters.—*LONG v. CAPE TOWN* (Bp.) (1863), 1 Moo. P. C. C. N. S. 411; Brod. & F. 293; 2 New Rep. 465; 8 L. T. 738; 11 W. R. 900; 15 E. R. 756, P. C.

Annotations.—*Reid*. *Re Natal*, Lord Bp. (1865), 3 Moo. P. C. C. N. S. 115; *Natal Bp. v. Gladstone* (1866), L. R. 3 Eq. 1; *Merriman v. Williams* (1882), 7 App. Cas. 484. *Mentd*. *Ex p. Jenkins* (1868), L. R. 2 P. C. 258; *Cape Town Bp. v. Natal Bp.* (1869), L. R. 3 P. C. 1; *Brown v. Montreal Curé* (1874), L. R. 6 P. C. 157; *The Parlement Belge* (1879), 4 P. D. 120; *Read v. Lincoln Bp.* (1889), 14 P. D. 88; *Free Church of Scotland* (General Assembly) v. Overtoun, Macalister v. Young, [1901] A. C. 515.

17. Not examiner's room.—The examiner's office is not a public ct. & he has no discretion to admit any persons other than the parties & their counsel, solrs. or agents.—*Re WESTERN OF CANADA OIL, LANDS, & WORKS Co.* (1877), 6 Ch. D. 109; 46 L. J. Ch. 683; 25 W. R. 787.

Annotations.—*Reid*. *Re Grey's Brewery Co.* (1883), 53 L. J. Ch. 262. *Mentd*. *Re Heseltine*, [1891] W. N. 25.

Attorney-General.—*See CONSTITUTIONAL LAW*, Vol. XI., p. 512, No. 128.

Recognised foreign courts.—*See CONFLICT OF LAWS*, Vol. XI., p. 414, No. 1029 *et seq.*

Tribunal of Appeal under London Building Acts.—*See METROPOLIS.*

Commissioners of Sewers.—*See Nos.* 1125, 1126, 1130, *post*.

Court or judge.—*See Nos.* 832–837, 841, 850, 856, 868, *post*.

Part II.—Constitution.

18. At common law—By statute—By prescription.—A prohibition was prayed to the Chancellor's Ct. of the University of Oxford in the behalf of D., who, being a townsman of Oxford, was libelled against in that ct. upon a statute or bye-law of the university made in King James' time, that whoever *privilegiatus sive non privilegiatus* should be taken walking in the streets at nine o'clock at night or after, having no reasonable excuse to be allowed by the proctor, should forfeit 40s.; & that D. was taken walking abroad at that hour, & being demanded a reason thereof, he refused to give any account; & *causa contemptus et ad morum reformationem* this libel was exhibited:—*Held*: the proceeding in the Chancellor's Ct., which was according to the civil law, could not be warranted by the King's charter for no

ct., other than such as proceed according to law, can be, unless by prescription or Act of Parliament; wherefore in regard if the university should entitle themselves to this jurisdiction by prescription, it were properly triable by a jury.—*DODWELL v. OXFORD UNIVERSITY* (1680), 2 Vent. 33; 86 E. R. 292.

Annotations.—*Mentd*. *Pitts v. Evans* (1738), 7 Mod. Rep. 254; *Butchers' Co. v. Morey* (1790), 1 Hy. Bl. 370.

19. By prescription.—*GOODSON v. DUFFIELD*, No. 1024, *post*.

20. Whether by bishop, clergy & laity in colony.—*LONG v. CAPE TOWN* (Bp.), No. 16, *ante*.

Right of Crown to establish.—*See CONSTITUTIONAL LAW*, Vol. XI., p. 515, Nos. 164, 165.

By Order in Council—Consular court.—*See Part XVI., post*.

Part III.—Extinction.

21. By statute.—The Queen in Council has power, under County Cts. Act, 1846 (c. 95), to abolish the several cts. mentioned in scheds. A & B to that Act, without changing them into cts. to be

holden as county cts.—*R. v. DYER* (1849), 13 Q. B. 851; 18 L. J. Q. B. 285; 13 L. T. O. S. 385; 13 J. P. 606; 13 Jur. 984; 116 E. R. 1489.

Loss of jurisdiction.—*See Part IV., Sect. 13, post*.

whether a patent had or had not been become void:—*Held*: a ct. or judicial tribunal for the determination of such matters was constituted.—*Re BELL TELEPHONE Co.* (1884), 7 O. R. 605; 9 O. R. 339; 4 Cart. 618.—*CAN.*

b. Not meeting of creditors—Called by official assignee.—The official assignee in bkcy., when presiding at a meeting of creditors called under Bkcy. Act, 1892, at which a bankrupt is being examined on oath, is not a

judge of a ct. or tribunal, & is not exercising judicial authority.—*SEARL v. LYONS* (1908), 27 N. Z. L. R. 521.—*N.Z.*

c. Local Marine Board.—Local Marine Board is a "court" within Merchant Shipping Act, 1894, s. 470.—*BOARD OF TRADE v. LEITH LOCAL MARINE BOARD* (1896), 24 R. (Ct. of Sess.) 177.—*SCOT.*

d. Not wages board.—*NEWCASTLE COAL Co. v. FIREMEN'S UNION* (1908),

6 C. L. R. 466; 25 N. S. W. W. N. 100.—*AUS.*

e. Workmen's Compensation Board.—*CANADIAN NORTHERN RY. Co. v. WILSON*, [1918] 3 W. W. R. 184; 43 D. L. R. 412.—*CAN.*

PART II.

f. By Governor-General.—*COOKE v. CAPE TOWN MAGISTRATE* (1919), C. P. D. 237.—*S. AF.*

Part IV.—Jurisdiction.

SECT. 1.—IN GENERAL.

22. Principle governing jurisdiction.]—The root principle of the English law about jurisdiction is that the judges stand in the place of the Sovereign in whose name they administer justice (LORD HALDANE).—RUSSELL (JOHN) & CO., LTD. v. CAIZER, IRVINE & CO., LTD., [1916] 2 A. C. 298; 85 L. J. K. B. 1152; 115 L. T. 86, H. L.

See, also, CONSTITUTIONAL LAW, Vol. XI., p. 515.

Objection to by prohibition.]—See CROWN PRACTICE, pp. 372 *et seq.*, *post*.

SECT. 2.—HOW DERIVED.

SUB-SECT. 1.—AT LAW.

23. General rule.]—(1) The Mayor's Ct. in London is an inferior ct.

(2) All lawful jurisdiction is derived from and must be traced to the Royal authority. Any exercise, however fitting it may appear, of jurisdiction not so authorised is an usurpation of the prerogative & a resort to force unwarranted by law (WILLES, J.).

(3) A plea that matter within the general jurisdiction of a superior ct. is, by reason of special privilege, exempt therefrom, & subject to another ct. . . . must show a ct. in which the suit may be effectually prosecuted (WILLES, J.).

(4) Where the defect [of jurisdiction over the cause] is not apparent, & depends upon some fact in the knowledge of appct. which he had an opportunity of bringing forward in the ct. below, & he has thought proper, without excuse, to allow that ct. to proceed to judgment without setting up the objection, & without moving for a prohibition in the first instance, although it should seem that the jurisdiction to grant a prohibition in respect of the right of the Crown is not taken away, for mere acquiescence does not give jurisdiction; yet, considering the conduct of appct., the importance of making an end of litigation, & that the writ, though of right, is not of course, the ct. would decline to interpose, except perhaps upon an irresistible case, & an excuse for the delay, such as disability, malpractice, or matter newly come to the knowledge of appct. (WILLES, J.).

(5) There is yet another difference worth noting between cts. of general & cts. of limited jurisdiction, namely, that pltf. is liable to an action for executing the process of an inferior ct. in a matter beyond his jurisdiction, & cannot justify under such process, whether he knows of the defect or not, & that the judge & officer are liable to a civil action if they knew of the defect of jurisdiction (WILLES, J.).—LONDON CORPN. v. COX (1867), L. R. 2 H. L. 230; 36 L. J. Ex. 225;

PART IV. SECT. 1.

g. Meaning of "jurisdiction."]—The word "jurisdiction," as used in statutes protecting judicial officers from actions for wrongs done by them in the exercise of their offices, means authority or power to act in a matter, & not authority or power to do an act in a particular manner or form.—TEYEN v. RAM LALL (1890), 1 L. R. 12 All. 115.—IND.

h. — 31 Geo. 3, c. 18, s. 111.]—"Jurisdiction" in above sect. means local jurisdiction.—*l. v. LAWLOR* (1863), 6 Cox. C. C. 187, C. C. A. IR.

PART IV. SECT. 2, SUB-SECT. 1.

24 i. Cannot be created by court.]—

A common law judge has no power, unless when given him by statute, to direct a feigned issue to be tried by a jury; & cannot, by creating a proceeding of the kind, confer this jurisdiction upon himself.—MCLAUGHLIN v. MCLAUGHLIN (1865), 15 C. P. 182.—CAN.

24 ii. —.]—If the judge has not jurisdiction, he cannot confer jurisdiction upon himself by an erroneous decision to that effect.—WINNIPEG v. BROCK (1910), 16 W. L. R. 45.—CAN.

24 iii. —.]—A ct. cannot by its adjudication create a jurisdiction in itself.—MAINGAY v. GAHAN (1793), Ridg. L. & S. 70.—IR.

16 W. R. 41, H. L.; *affq.* S. C. *sub nom.* COX v. LONDON CORPN. (1863), 2 H. & C. 401, Ex. Ch.

Annotations:—As to (1) Consd. Appleford v. Juddins (1878), 3 C. P. D. 489. *Refd.* Buccleuch v. Metropolitan Board of Works (1870), L. R. 5 Exch. 221; Banque de Credit Commercial v. De Gas (1871), L. R. 6 C. P. 142; Cooke v. Gill (1873), L. R. 8 C. P. 107; Quartly v. Timmins (1874), L. R. 9 C. P. 416; Hawes v. Paveley (1876), 1 C. P. D. 418. *As to (2) Consd.* Worthington v. Jeffries (1875), L. R. 10 C. P. 379. *As to (3) Refd.* R. v. Tristram, [1902] 1 K. B. 816. *As to (4) Consd.* Serjeant v. Dale (1877), 2 Q. B. D. 558; Broad v. Perkins (1888), 21 Q. B. D. 533; *Re* Cundall & Vavasour (1906), 95 L. T. 483. *Refd.* Combe v. De La Bere (1882), 22 Ch. D. 316; R. v. Shropshire County Court Judge (1887), 20 Q. B. D. 212; Moore v. Gamgee (1890), 25 Q. B. D. 244; Farquharson v. Morgan, [1891] 1 Q. B. 552; Watson v. Potts (No. 2), [1899] 1 Q. B. 430; Falkingham v. Victorian Ry. Comr., [1900] A. C. 152; McIntosh v. Simpkins (1901), 81 L. T. 21; R. v. Tristram, [1902] 1 K. B. 816; Norwich Corp'n. v. Norwich Electric Tram. Co., [1906] 2 K. B. 119. *Generally, Mentd.* Webster v. Webster (1862), 8 Jur. N. S. 1017; Morris v. Lantour (1861), 3 New Rep. 475; Frith v. Guppy (1866), L. R. 2 C. P. 32; Shea v. United Sick & Burial Soc. of St. Patrick (1867), 17 L. T. 176; Byrne v. Guano Consignment Co. (1872), 25 L. T. 935; Chambers v. Green (1875), L. R. 20 Eq. 552; Jacobs v. Brett (1875), L. R. 20 Eq. 1; Wirth v. Austen (1875), 32 L. T. 669; Bridge v. Branch (1876), 1 C. P. D. 633; Oram v. Breurey (1877), 2 Ex. D. 316; Atwood v. Sellar (1879), 4 Q. B. D. 312; London Corp'n. v. London Joint Stock Bank (1881), 6 App. Cas. 393; Chadwick v. Ball (1885), 14 Q. B. D. 855; Read v. Brown (1888), 59 L. T. 605; British South Africa Co. v. Companhia de Mocambique, [1893] A. C. 602; Payne v. Hogg (1900), 82 L. T. 584; Board v. Board, [1919] A. C. 956; *Re* Clifford & O'Sullivan, [1921] 2 A. C. 570.

— Crown as source of jurisdiction.]—See CONSTITUTIONAL LAW, Vol. XI., p. 515.

24. Cannot be created by court.]—The ct. cannot invent a new jurisdiction because it would be convenient that it should do so.—COWLEY (EARL) v. COWLEY (COUNTESS), [1901] A. C. 450; 70 L. J. P. 83; 85 L. T. 251; 50 W. R. 81; 17 T. L. R. 725, H. L.

Annotations: Mentd. *Re* Greenwood, Goodhart v. Woodhead, [1902] 2 Ch. 198; *Re* Croxon (otherwise Croxton), Croxon (otherwise Croxton) v. Fellers (1904), 89 L. T. 733.

Whether conferred by finding of fact.]—See No. 135, *post*.

SUB-SECT. 2.—BY STATUTE.

Effect of Judicature Acts.]—See Part XI., Sect. 2, sub-sect. 1, A. (b), *post*.

SECT. 3.—EXTENT OF.

SUB-SECT. 1.—SUPERIOR COURTS.

A. In General.

25. General rule.]—Pltfs. shipped goods at L. on a ship owned by a co. domiciled in Scotland for carriage to Calcutta. On her arrival at Madras the ship was requisitioned by the Indian Govt. &

24 iv. —.]—COOKE v. CAPE TOWN MAGISTRATE (1919), C. P. D. 237.—S. AF.

24 v. —.]—*Interpretation of statute.]*—Prohibition will not lie to a ct. merely because the judge has erred in his construction of a statute, where he does not by this error in construction give himself jurisdiction he does not in law possess.—*Re* LONG POINT CO. v. ANDERSON (1891), 18 A. R. 401.—CAN.

m. Cannot be created by parties.—If a statutory court.]—It is not competent to the parties to agree to confer jurisdiction upon a statutory ct.—MANITOBA WINDMILL CO. v. VIGIER (1909), 18 Man. L. R. 427.—CAN.

Sect. 3.—Extent of: Sub-sect. 1, A. & B. (a), (b) & (c), C.]

the cargo discharged. Thereupon another co. domiciled in Scotland, without the knowledge or consent of the cargo owners, loaded the cargo on a ship in which they were interested, & which was then bound for Calcutta, & on her way this ship was sunk by an enemy cruiser, & her cargo, including pl'ts.' goods, was lost. Pl'ts. issued a writ in the K. B. Div. against both cos., claiming damages for breach of contract, or duty in the carriage of goods by sea, & for trespass & wrongful conversion of the goods. The writ was marked "Not for service out of the jurisdiction." The first defts. consented to the jurisdiction, & their sol's. accepted service on their behalf. Pl'ts. then, by leave of the ct., under R. S. C., Ord. 11, r. 1 (g), issued a concurrent writ & served it on the second defts. in Scotland. These defts., after entering a conditional appearance, applied to have the concurrent writ & the service thereof set aside:—*Held*: the consent of the first defts. to the jurisdiction could not affect the rights of the third parties, & the action was not properly brought against the first defts. within the meaning of the above Ord., & therefore the concurrent writ & the service thereof ought to be set aside.

Jurisdiction can be given by accepting service, that is to say, by consent (LORD HALDANE).

The sphere of jurisdiction, & the sphere of the right which the acceptance of service confers upon the ct., are not confemurous. For example, the ct. may decline jurisdiction on the ground that it is contrary to its duty to entertain it. If the action relates to matrimonial status, then, according to well settled principles of private international law—well settled at any rate so far as this country is concerned—the ct. will now refuse to interfere unless the parties are domiciled—the husband at any rate—in this country. If the action relates to land abroad, similarly the ct. decline jurisdiction because they cannot go into questions of title under foreign law. Again, if a foreign Sovereign is sued, although it might be possible to serve him within this country, the ct. would decline to regard the service as giving rise to jurisdiction, unless, indeed, the foreign Sovereign chose voluntarily to submit (LORD HALDANE).

The persons who are already defts. in the action, although they may submit to the jurisdiction & so preclude themselves from raising any objection, cannot by that procedure affect the rights of third parties (LORD SUMNER).—*RUSSELL (JOHN) & CO., LTD. v. CAYZER, IRVINE & CO., LTD.*, [1916] 2 A. C. 298; 85 L. J. K. B. 1152; 115 L. T. 86; 60 Sol. Jo. 640, II. 1.

26. Court has jurisdiction—Unless express exception.]—Nothing shall be intended to be out of the jurisdiction of a superior ct., but what expressly appears to be so; nor within the jurisdiction of an inferior ct., but what is expressly alleged to be so.

It is not necessary to allege in a declaration in the ct. of the County Palatine of Durham that the cause of action arose within its jurisdiction; for it shall be so intended, as it is an original superior ct.—*PEACOCK v. BELL & KENDAL* (1667), 1 Saund. 69; 1 Sid. 330; 2 Keb. 226; 85 E. R. 81; *sub nom. HICCOCKS v. BELL*, 2 Keb. 182.

Annotations:—Consd. Howard v. Gosset, Gosset v. Howard (1847), 6 State Tr. N. S. 319; Oulton v. Radcliffe (1874), L. R. 9 C. P. 189. *Refd.* Stannian v. Davis (1704), 1 Salk. 404; Derby v. Athol (1749), 1 Ves. Sen. 202; *It. v.* Johnson (1805), 6 East, 583; Williams v. Gibbs (1836), 2 Har. & W. 241; Ryalls v. R. (1849), 11 Q. B. 795; Gosling v. Voley (1853), 4 H. L. Cas. 679; London Corp'n. v. Cox (1867), L. R. 2 H. L. 239; Scott v. Bennett (1871), L. R. 5 H. L. 234; Byrne v. Guano Consignment Co.

(1872), 25 L. T. 935, *Re Cundall & Vava-sour* (1906), 95 L. T. 483. *Mentd.* Emory v. Barlett (1729), 2 Sira. 827; Griffin v. Alcock (1733), 2 Burn. K. B. 398; Baylis v. Hayward (1835), 1 Har. & W. 609; Lane v. Thelwell (1836), Tyr. & Gr. 352; Bruce v. Walt (1840), 1 Man. & G. 1; Thom v. Chinnock (1840), 1 Man. & G. 216; Pease v. Chaytor (1863), 3 B. & S. 620; Cooke v. Gill (1873), L. R. 8 C. P. 107.

27. ———.]—Nothing shall be intended out of the jurisdiction of a superior ct., or within that of an inferior ct., unless it specially appear.—*ANON.* (1675), 1 Freem. K. B. 314; 89 E. R. 232.

28. ———.]—In every plea to the jurisdiction you must state another jurisdiction, & in every case to repel the jurisdiction of the King's ct. you must show a more proper & more sufficient jurisdiction for if there is no other mode of trial that alone will give the King's ct. a jurisdiction (LORD MANSFIELD).—*MOSTYN v. FABRIGAS* (1775), 1 Cowp. 161; 98 E. R. 1021, Ex. Ch.

Annotations:—Consd. R. v. Johnson (1805), 6 East, 583. *Refd.* Board v. Board, [1919] A. C. 956. *Mentd.* Mure v. Kave (1811), 4 Taunt. 34; Warden v. Bailey (1811), 4 Taunt. 67; Morris v. Robinson (1824), 5 Dow. & Ry. K. B. 34; Shackell v. Macaulay (1824), 3 L. J. O. S. Ch. 30; Bedreechund v. Elphinstone (1830), 2 State Tr. N. S. 379; Hill v. Bigge (1841), 3 Moo. P. C. C. 465; A.-G. v. Boyet (1846), 15 M. & W. 60; *It. v.* Upton St. Leonard (1847), 10 Q. B. 827; Munden v. Brunswick (1847), 16 L. J. Q. B. 300; Houlden v. Smith (1850), 19 L. J. Q. B. 170; Ruckmaboze v. Lulloobhoy Mottichund (1853), 5 Moo. Ind. App. 234; Magnay v. Edwards (1853), 21 L. T. O. S. 103; *Er p.* Baker (1857), 26 L. J. M. C. 155; A.-G. v. Kent (1862), 1 H. & C. 12; Scott v. Seymour (1862), 32 L. J. Ex. 61; Di Sora v. Philipps (1863), 10 H. L. Cas. 624; Feather v. R. (1865), 6 B. & S. 257; The Halley (1868), 5 Moo. P. C. C. N. S. 262; Philipps v. Ryre (1869), L. R. 4 Q. B. 225; Ellis v. McHenry (1871), L. R. 6 C. P. 228; Ha t v. Gumpach (1872), L. R. 1 P. C. 439; Whitaker v. Forbes (1875), 15 L. J. Q. B. 140; Musgrave v. Pulido (1879), 5 App. Cas. 102; Do Grouchy v. Wills (1879), 43 J. P. 818; *Re Hawthorne, Graham v. Massey* (1883), 23 Ch. D. 743; Ewing v. Orr Ewing (1885), 10 App. Cas. 453; Sutton v. Johnstone (1886), 1 Term Rep. 493; British South Africa Co. v. Companhia de Mocambique, [1893] A. C. 602; Adam v. British & Foreign S.S. Co., [1898] 2 Q. B. 430; Gilbey v. Cossey (1912), 106 L. T. 607.

29. ———.] In a claim of cognisance of a suit it is always alleged, in some words or other, that the ct. claiming the cognisance has the sole & exclusive jurisdiction, & that the authority of other ct's. is excluded; & when there is no allegation to that effect, the claim is always disallowed. The jurisdiction of the King's superior ct's. over matters originally cognisable by them, cannot be taken away but by express words, or, perhaps, by a necessary implication arising from the use of words absolutely inconsistent with the exercise of a jurisdiction by the superior ct's., & to which effect cannot be given but by the exclusion of such a jurisdiction.

Mere allegation of cognisance by no means imports sole & exclusive jurisdiction.—*R. v. LONDON CORPN.* (1829), 9 B. & C. 1; 4 Man. & Ry. K. B. 36; 109 E. R. 1.

Annotations:—Mentd. R. v. Johnson (1839), Macf. & Rob. 1; Scales v. Key (1840), 11 Ad. & El. 819.

30. ———.]—If a right exists, the presumption is that there is a ct. which can enforce it, for if no other mode of enforcing it is prescribed, that alone is sufficient to give jurisdiction to the King's ct's. of justice. In order to oust jurisdiction, it is necessary, in the absence of a special law excluding it altogether, to plead that jurisdiction exists in some other ct. (LORD HALDANE).—*BOARD v. BOARD*, [1919] A. C. 956; 88 L. J. P. C. 165; 121 L. T. 620; 35 T. L. R. 635, P. C.

Plea to jurisdiction, *see* Sect. 11, sub-sect. 3, *post*.

Not in matters of peerage or dignities connected therewith.]—See PEERAGES & DIGNITIES.

31. Judicial notice of customs of other superior courts—Not of inferior courts.]—Every ct. is bound to take judicial notice of the customs of

the other superior cts.; *secus* of inferior cts.—**LANE'S CASE, SMITH v. LANE** (1886), 2 Co. Rep. 16 b; 1 And. 191; 1 Leon. 170; 76 E. R. 423.

Annotations:—**Consd.** Mounson v. Bourn (1639), Cro. Car. 527; Hayward v. Kinsey (1701), 12 Mod. Rep. 568. **Refd.** Kemp v. Barnard (1638), Cro. Car. 513; Shaftsbury's Case (1677), 1 Mod. Rep. 144; Cobbett v. Hudson (1849), 13 Q. B. 497. **Mentd.** Field v. Boethsby (1859), 2 Sid. 137; Bankers' Case (1695), Skin. 601; Machil v. Clark (1702), 2 Balk. 619; Doe d. Biddulph v. Poole (1848), 11 Q. B. 713.

32. Cannot question order of Parliament.—A ct. of law cannot question an order of Parliament.—**STREATER'S CASE** (1653), 5 State Tr. 365. **Annotation**:—**Mentd.** R. v. Pritchard (1665), 1 Keb. 871.

33. Not enlarged by resolution of judges.—Judges upon their oath cannot make resolutions to enlarge jurisdiction.—**REEVES v. BUTLER** (1726), Gilb. Ch. 195; 25 E. R. 136.

Annotations:—**Mentd.** Milbourn v. Reade (1744), 7 Mod. Rep. 469; Batchelor v. Bigg (1772), 3 Wils. 319; Smith v. Edwards & Crook (1835), 1 Har. & W. 497.

34. Cannot grant dispensation from obedience to Act of Parliament.—A ct. of law has no power to grant a dispensation from obedience to an Act of Parliament, & ought not to substitute for an injunction to obey a statute, an undertaking by parties merely to do their best to obey.—**A.-G. v. BIRMINGHAM, TAME & REA DISTRICT DRAINAGE BOARD**, [1912] A. C. 788; 82 L. J. Ch. 45; 107 L. T. 353; 76 J. P. 481; 11 L. G. R. 194, H. L.

Annotations:—**Mentd.** A.-G. v. Kerr & Ball (1914), 79 J. P. 51; Metropolitan Water Board v. Dick, Kerr, [1917] 2 K. B. 1; Countess Warwick S.S. Co. v. Le Nickel Soc. Anon., Anglo Northern Trading Co. v. Emlyn, Jones & Williams (1917), 87 L. J. K. B. 309; Robinson v. R., [1921] 3 K. B. 183.

Jurisdiction to award costs.—See PRACTICE & PROCEDURE.

B. Over What Persons.

(a) Sovereigns.

See, generally, ACTION, Vol. I., p. 45, Nos. 351 *et seq.*

35. General rule.—A sovereign prince is exempted from the jurisdiction of the tribunals of a state in which he happens to be, absolutely so far as his person is concerned, and, with respect to his property, at least so far as that is connected with the dignity of his position, & the exercise of his public functions. No proceeding *in rem* can be instituted against the property of a sovereign prince if the *res* can in any fair sense be said to be connected with the *jus coronae* of the sovereign, but other property of a sovereign may be proceeded against *in rem*.—**THE CHARKIEH** (1873), L. R. 4 A. & E. 59; 42 L. J. Adm. 17; 28 L. T. 513; 1 Asp. M. L. C. 581; *subsequent proceedings*, L. R. 4 A. & E. 120.

Annotations:—**Refd.** The Constitution (1879), 4 P. D. 39; The Parlement Belge (1880), 5 P. B. 197. **Mentd.** United States Frigate Constitution (1879), 27 W. R. 739; The Heinrich Bjorn (1885), 10 P. D. 41; Mighell v. Johore Sultan, [1894] 1 Q. B. 149; Foster v. Globe Venture Syndicate (1900), 82 L. T. 253; The Porto Alexandre (1919), 89 L. J. P. 97; Aksionairnoye Obschestoo A. M. Luther v. Sagor, [1921] 1 K. B. 456.

36. —.—**RUSSELL (JOHN) & CO., LTD. v. CAYZER, IRVINE & CO., LTD.**, No. 25, *ante*.

(b) Ambassadors.

See CONSTITUTIONAL LAW, Vol. XI., p. 530, Nos. 390 *et seq.*

(c) Foreigners.

See ALIENS, Vol. II., p. 128, Nos. 50 *et seq.*; BANKRUPTCY & INSOLVENCY, Vol. IV., p. 24,

Nos. 193 *et seq.*; CONFLICT OF LAWS, Vol. XI., pp. 306 *et seq.*; CRIMINAL LAW & PROCEDURE.

C. Territorial Jurisdiction.

37. At common law—To low water-mark.—The jurisdiction of the Queen does not extend from the coast beyond low water-mark unless it has been so extended by an Act of Parliament, & therefore, R. S. C., Ord. 11, r. 1, which provides for the service of a writ of summons out of the jurisdiction where the act for which damages are sought to be recovered was done within the jurisdiction, does not authorise such service where the action was for the death of a person through the negligent management of defts.' vessel at sea, though within three miles of the coast of England.

As to Ord. 11, r. 1, that does not alter or extend the jurisdiction of the cts. but only gives them power to allow service of process abroad in respect of a cause of action arising in this country (GROVE, J.).—**HARRIS v. FRANCONIA (OWNERS)** (1877), 2 C. P. D. 173; 46 L. J. Q. B. 363.

Annotations:—**Refd.** The Duc D'Aumale (1902), 87 L. T. 674. **Mentd.** Davidson v. Hill, [1901] 2 K. B. 606.

38. Limit of three miles—Whether jurisdiction includes.—Prisoner was indicted at the Central Criminal Ct. for manslaughter. He was a foreigner & in command of a foreign ship, passing within three miles of the shore of England on a voyage to a foreign port; & whilst within that distance his ship ran into a British ship & sank her, whereby a passenger on board the latter ship was drowned. The facts of the case were such as to amount to manslaughter by British law:—**Held**: (1) the Central Criminal Ct. had no jurisdiction to try the prisoner for the offence charged. Prior to Offences at Sea Act, 1536 (c. 15), the admiral had no jurisdiction to try offences by foreigners on board foreign ships, whether within or without the limit of three miles from the shore of England; that that & the subsequent statutes only transferred to the common law cts. & the Central Criminal Ct. the jurisdiction formerly possessed by the admiral; (2) by the principles of international law, the power of a nation over the sea within three miles of its coasts is only for certain limited purposes; & Parliament could not, consistently with those principles, apply English criminal law within those limits.—**R. v. KEYN** (1876), 2 Ex. D. 63; 2 Q. B. D. 90; 13 Cox, C. C. 403; *sub nom.* R. v. KEYN, THE FRANCONIA, 46 L. J. M. C. 17; 41 J. P. 517, C. C. R.

Annotations:—**As to** (1) **Expld. & Appld.** Harris v. Franconia (Owners) (1877), 2 C. P. D. 173. **Consd.** R. v. Dudley & Stephens (1884), 54 L. J. M. C. 32. **Refd.** R. v. Fletcher, *Ex p. Birnie* (1876), 35 L. T. 538; Davidson v. Hill, [1901] 2 K. B. 606; West Rand Central Gold Mining Co. v. R., [1905] 2 K. B. 391. **As to** (2) **Refd.** Direct United States Cable Co. v. Anglo-American Telegraph Co. (1877), 2 App. Cas. 394; Blackpool Pier Co. & South Blackpool Jetty Co. v. Fyde Union Assmt. Com. & Layton-with-Warbrock (1877), 41 J. P. 344, Carr v. Francis Times, [1902] A. C. 176; Denaby & Cadeby Main Collieries v. Anson, [1911] 1 K. B. 171; Secretary of State for India v. Chelikani Rama Rao (1916), 85 L. J. P. C. 222. **Generally, Mentd.** Chartered Mercantile Bank of India, London & China v. Netherlands India Steam Navigation Co. (1883), 10 Q. B. D. 521; The Mecca, Cory v. The Mecca (1894), 64 L. J. P. 40; Badische Anilin und Soda Fabrik v. Johnson & Basile Chemical Works, Bindschodler, [1897] 2 Ch. 322; A.-G. for British Columbia v. A.-G. for Canada, [1914] A. C. 153; Johnstone v. Pedlar (1921), 90 L. J. P. C. 181.

See, now, TERRITORIAL WATERS JURISDICTION ACT, 1878 (c. 73).

39. Extra-territorial jurisdiction—General rule.—The cts. of civil jurisdiction in every country sit

48 ii. ———.—]—CLARKE v. MAC-
DONALD (1883), 4 O. R. 310.—CAN.
48 iii. ———.—]—CANADIAN
NORTHERN RY. CO. v. WILSON, [1918]
3 W. W. R. 184.—CAN.

Sect. 3.—Extent of: Sub-sect. 2.]

is a contradiction in terms to create a tribunal with limited jurisdiction & unlimited power to determine such limit at its own will & pleasure—such a tribunal would be autocratic, not limited—& it is immaterial whether the decision of the inferior tribunal on the question of the existence or non-existence of its own jurisdiction is founded on law or fact; a ct. with jurisdiction confined to the City of London cannot extend such jurisdiction by finding as a fact that Piccadilly Circus is in the ward of Chepe (FARWELL, L.J.).—*R. v. SHOREDITCH ASSESSMENT COMMITTEE*, *Ex p. MORGAN*, [1910] 2 K. B. 859; 80 L. J. K. B. 185; 103 L. T. 262; 74 J. P. 361; 26 T. L. R. 663; Konst. & W. Rat. App. (1909-12), 203; 8 L. G. R. 744, C. A.

Annotations.—*Mentd.* Jones v. West Derby Union (1911), 75 J. P. 375; L. C. C. v. Shoreditch B. C. (1911), 105 L. T. 515; Wrigglesworth v. R. (1911), 104 L. T. 593; Parrish v. Hackney Corp., [1912] 1 K. B. 669; Truman, Hanbury, Buxton, Petitioners, *Re The Eagle Public House* (1912), 107 L. T. 385; 1 R. Comrs. v. Fitzwilliam, [1913] 1 K. B. 184; R. v. Islington Assmt. Com., *Ex p. L. C. C.*, [1914] 3 K. B. 481; Port of London Authority v. Orsett Union Assmt. Com., [1919] 1 K. B. 84.

50. Must comply with statutory limitations.]—When an Act of Parliament limits jurisdiction or power to any inferior man, he ought to pursue his limited jurisdiction precisely in all the substantial points (HUTTON, J.).—*HICKFORD v. MACHIN* (1624), Win. 82; 124 E. R. 69.

51.—*There is an old maxim, boni iudicis est ampliare jurisdictionem*, which is not to be understood as implying that it is right to extend jurisdiction over matters clearly not within it, but that in doubtful cases jurisdiction ought to be entertained, in order to prevent the

failure of justice. The only exception to this wise maxim is in the case of a tribunal of inferior jurisdiction, such as that of a justice of the peace in penal matters, whose powers the superior cts. always confine to the strict letter of the law (SIR JOHN CROSS).—*Re CHAMBERS*, *Ex p. DAVY* (1834), 1 Mont. & A. 283; 4 Deac. & Ch. 322, Ct. of R.

52.—*By a private Act a borough ct. was empowered to try actions of debt provided the sum or damages sought to be recovered should not exceed £50. A judgment having been recovered in debt for £50 & £6 15s. 8d. damages:—Held: the word sum in the Act meant debt &, as the debt sought to be recovered was £50 only, the ct. had jurisdiction, the damages being awarded merely for the purpose of carrying costs.*—*JOULE v. TAYLOR* (1851), 7 Exch. 58; 2 L. M. & P. 615; 21 L. J. Ex. 31; 18 L. T. O. S. 141; 16 J. P. 152; 155 E. R. 855.

Annotation.—*Mentd.* Partridge v. Elkington (1870), L. R. 6 Q. B. 82.

53. Includes jurisdiction in incidental matters —When principal matter within jurisdiction.]—If an inferior ct. has jurisdiction of the principal matter, it has also jurisdiction of all matters incident thereunto, & may try them according to the course of their law so that it be not contrary to the common law.—*OYLES v. MARSHALL* (1654), Sty. 418; 82 E. R. 826.

54. May entertain counterclaim —Arising beyond jurisdiction—Judicature Act, 1873 (c. 66), ss. 89, 90—Relief limited to amount of plaintiff's claim.]—Under above Act an inferior ct. has jurisdiction to entertain a claim set up by way of counterclaim although it is in respect of matters which arose beyond its local jurisdiction, but the

50 i. Must comply with statutory limitations.]—Titles of ct. do not override statutory provisions.—*HOWARD v. HERRINGTON* (1892), 20 A. R. 175.—CAN.

53 i. Includes jurisdiction in incidental matters —When principal matter within jurisdiction.]—Where issue hath been knit upon a point upon which the ct. hath full jurisdiction, the ct. can try every incidental question, though it hath no original jurisdiction of the incidental question. It will, therefore, determine on the validity of a marriage, if it arises incidentally, though of ecclesiastical jurisdiction; so also of the question of prize or no prize, if it arises incidentally.—*DRIVAR v. WHITE* (1824), Rowe, 189.—IR.

53 ii.—*Power over process of court—Setting aside attachment.]*—*Re MITCHELL v. SCRIBNER* (1890), 20 O. R. 17.—CAN.

53 iii.—*Where the ct. has jurisdiction to deal with a case so far as its subject-matter is concerned, it has all powers necessary for bringing all proper parties before it.*—*SEXTON v. O'HALLORAN*, [1904] 1 I. R. 123; 36 I. L. T. 218.—IR.

53 iv.—*Supplemental suit.]*—Cts. having jurisdiction over the subject-matter of a suit in which a right is asserted have also jurisdiction over a supplemental suit in which pltf. seeks to follow out that right.—*KASHEE NATH KOOKER v. DEB KRISTO RAMANOOJ DOS* (1871), 16 W. R. 240.—IND.

53 v.—*Question of limitation arising.]*—Where a ct. is competent to hear a particular suit, it is competent to decide every question, whether of limitation or any other matter, arising in the suit. If it decides such question wrongly it does not thereby lose its jurisdiction, & its decree, though possibly wrong, is not a nullity. The decree is a perfectly good decree until reversed in some manner provided by law.—*NATHU RAM v. KALIAN DAS*

(1904), 1 L. R. 26 All. 522. IND.

53 vi.—*Title to land incidentally in question.]*—Where an action is brought which, on the face of it, is within the jurisdiction of the ct., & at the hearing a question of title arises, which it is not the object of the action to determine, but which it is necessary to determine in order to decide the claim which it is the immediate object of the action to enforce, such question arises incidentally, & the ct. has power to determine it.—*TATE v. McCALLUM* (1894), 13 N. Z. L. R. 232.—N.Z.

54 i. May entertain counterclaim —Arising beyond jurisdiction—Relief limited to amount of plaintiff's claim.]—The ct. may deal with the counterclaim, which, if it were an original claim, would be beyond its jurisdiction, to the extent of answering pltf.'s claim, but not further.—*BATES v. CRAYTHORNE* (1886), 19 N. S. R. (R. & G.) 250.—CAN.

54 ii.—*McILROY v. McFEWAN* (1898), 12 Man. L. R. 164.—CAN.

54 iii.—*Cox v. CHRISTIE* (1903), 5 Terr. L. R. 475.—CAN.

54 iv.—*Dismissal of counterclaim where action dismissed.]*—*KLEMMER v. BIRMINGHAM* (1909), 11 W. L. R. 9.—CAN.

g.—*If not beyond court's jurisdiction.]*—The jurisdiction in respect to counterclaims is confined to claims for an amount over which the inferior ct. would have had jurisdiction had deft. sought to have recovered the subject-matter of the counterclaim by suing therefor as pltf. in such ct.—*CANADIAN LAUNDRY CO. v. UNGER'S LAUNDRY* (1916), 44 N. B. R. 423; 35 D. L. R. 755.—CAN.

h.—*Where no relief given—Jurisdiction not affected.]*—A counterclaim upon which no relief is given can make no difference as to the jurisdiction of a ct.—*FITCHETT v. MELLOW*

(1898), 18 P. R. 161.—CAN.

k.—*Original claim beyond jurisdiction—Abandonment of excess.]*—Pltf. in a suit for damages for breach of contract abandoned the excess over the statutory limit deft. counterclaiming for less than the limit. Both the claim & counterclaim were allowed, but the latter was set off against the original claim & judgment given for the balance.—*Held:* the counterclaim should have been set off against the statutory limit & judgment given for pltf. for the difference.—*BLACK v. McMULLEN*, [1917] 1 W. W. R. 933; 27 Man. L. R. 310.—CAN.

l.—*May not entertain set-off —For amount beyond jurisdiction.]*—A set-off for an amount beyond the jurisdiction ousts jurisdiction of the ct.—*JOHNSTON v. COX* (1875), 1 V. L. R. 281.—AUS.

m.—*R. v. COPE, Ex p. RAWSON, Re RAWSON v. BENNETT* (1883), 9 V. L. R. 294.—AUS.

n.—*To an action on a promissory note, deft. gave notice of a set-off of a claim greatly in excess of the jurisdiction of the ct.:—Held:* the ct. had no jurisdiction to entertain the set-off.—*WINDSOR v. YOUNG* (1915), 43 N. B. R. 313.—CAN.

o.—*R. v. STEWART, Mac. 636.*—N.Z.

p.—*Effect of credit for set-off.]*—Pltf. cannot, by giving credit for a set-off, compel deft. to set it up, or give the ct. jurisdiction.—*FURNIVAL v. SAUNDERS* (1866), 26 U. C. R. 119.—CAN.

q.—*May not entertain claims involving title to land.]*—*FITZSIMMONS v. MCINTYRE* (1869), 5 P. R. 119.—CAN.

r.—*R. v. HARSHMAN* (1873), 14 N. B. R. (Pug.) 346.—CAN.

s.—*GRAHAM v. SPETTIGUE* (1885), 12 A. R. 261.—CAN.

t.—*DANAHER v. LITTLE* (1890), 13 P. R. 361.—CAN.

w.—*NEELY v. PARRY*

power to grant relief in respect of such counterclaim is limited to the same amount which pltf. has claimed in the action.—*DAVIS v. FLAGSTAFF SILVER MINING CO. OF UTAH* (1878), 3 C. P. D. 228; 47 L. J. Q. B. 503; 38 L. T. 769; 26 W. R. 431, C. A.

Annotation :—*Mentd.* Webster v. Armstrong (1885), 1 T. L. R. 213.

55. Cannot grant new trial.]—BRISTOL CORPN. CASE (1702), 2 Salk. 650; 91 E. R. 553.

Annotation :—*Refd.* R. v. Day (1755), Say. 202.

56. —.]—An action was brought & a writ of inquiry of damages obtained, but the judge would not give judgment, because he had a design to set aside the writ of inquiry, though it appeared there was no irregularity therein. On motion for a mandamus to compel him to proceed to judgment:—Held: the judge of the inferior ct. might examine & inquire if the writ of inquiry or judgment, if any, was by fraud or surprise, though strictly regular, & if so, he might set it aside.

An inferior judge cannot grant a new trial nor set aside a judgment regularly obtained because this is altering the law, but an inferior ct. can set aside a judgment irregularly obtained for that is no judgment but void *ab initio*, & not like an erroneous judgment, which is good till reversed for error (*per Cur.*).—*R. v. URLING* (1717), Fortes. Rep. 198; 92 E. R. 817.

57. —.]—A judge of an inferior ct. cannot grant a new trial.—*BROOKE v. EWERS* (1718), 1 Stra. 113; 93 E. R. 418.

Annotation :—*Mentd.* R. v. London JJ., [1895] 1 Q. B. 616.

58. —.]—The judge of an inferior ct. cannot grant a new trial.

For matters of irregularity where the proceedings were contrary to the rules & practice of the ct. the judge of an inferior ct. may set aside a judgment.—*BAYLY v. BOORNE* (1720), 1 Stra. 392; 93 E. R. 587.

Annotation :—*Refd.* R. v. Peters (1758), 1 Burr. 568.

59. —.]—A new trial cannot be granted by an inferior ct.—*R. v. DAY* (1755), Say. 202; 90 E. R. 852.

60. —.]—Inferior ct.s. cannot grant a new trial.—*BLACQUIERE v. HAWKINS* (1780), 1 Doug. K. B. 378; 99 E. R. 244.

Annotations :—*Mentd.* Piper v. Chappell (1845), 14 M. & W. 624; London Corpn. v. Cox (1867), L. R. 2 H. L. 239; R. v. London Corpn., Roux v. Moxon (1872), 27 L. T. 61.

61. — On grounds of improper verdict.]—Pltf. in a cause in the Ct. of the Mayor of O. had obtained a verdict, but afterwards that ct. ordered a new trial on the ground that the verdict was against the weight of evidence. Dft. afterwards removed the cause by *habeas corpus cum causd.*

A rule *nisi* was then obtained to set aside the *habeas corpus* for irregularity, & for a mandamus commanding the mayor's ct. to proceed to judgment:—*Held*: the rule must be made absolute.

We do not think it proper to treat as doubtful the question whether, in the absence of express custom, a judge of an inferior ct. can grant a new trial on the ground of impropriety of the verdict (*DENMAN, C.J.*).—*R. v. OXFORD MAYOR'S COURT JUDGE* (1834), 13 Q. B. 21, n.; 3 Nev. & M. K. B. 877; 2 Nev. & M. M. C. 413; 116 E. R. 1171.

62. —.]—I apprehend it to be plain, as a general rule, that an inferior ct. cannot grant new trials. To that there may be exceptions; though even that has been doubted by very competent authorities (JERVIS, C.J.).—GREAT NORTHERN RY. Co. v. MOSSOP (1855), 17 C. B. 130; 25 L. J. C. P. 22; 26 L. T. O. S. 91; 19 J. P. 761; 2 Jur. N. S. 21; 4 W. R. 116; 139 E. R. 1018.

Annotations :—*Expld. & Distd.* Moxon v. London Tram. Co. (1888), 57 L. J. Q. B. 446. *Refd.* R. v. Greenwich County Court Judge (1888), 60 L. T. 248. *Mentd.* Irving v. Askew (1870), L. R. 5 Q. B. 208.

63. May set aside judgment—For matters of irregularity.]—R. v. URLING, No. 56, *ante*.

64. —.]—BAYLY v. BOORNE, No. 58, *ante*.

65. Judge of own practice.]—If there is an erroneous judgment given, it may be rectified on appeal, if an appeal lies, but the superior ct. cannot tell the judge what he is to do. Every inferior court is the proper judge of its own practice.—*Ex p. MORGAN* (1820), 2 Chit. 250.

66. Cannot enter judgment—On application for new trial.]—On the trial of an action in the Mayor's Ct. the jury found a verdict for dft. On a motion for a new trial the judge of the Mayor's Ct., being satisfied that he had all the materials before him to enable him to decide the case, ordered judgment to be entered for pltf. Dft. appealed to the Ct. of Appeal, alleging error upon the face of the record:—Held: (1) the appeal was rightly brought to the Ct. of Appeal; (2) the rules & orders made under Judicature Act, 1873 (c. 66) for regulating the procedure in the High Ct. did not apply to the Mayor's Ct., & the learned judge of that ct. had no power to enter judgment upon a motion for a new trial.—*PRYOR v. CITY OFFICES CO.* (1883), 10 Q. B. D. 501; 52 L. J. Q. B. 362; 48 L. T. 698; 31 W. R. 777, C. A.

Annotations :—As to (1) *Refd.* Darlow v. Shuttleworth, [1902] 1 K. B. 721. *Generally, Mentd.* Speers v. Daggers (1853), Cab. & El. 503; R. v. Selfe, [1908] 2 K. B. 121.

Jurisdiction of county courts.]—See COUNTY COURTS, Vol. XIII., pp. 156 *et seq.*; ADMIRALTY, Vol. I., p. 243, Nos. 1709 *et seq.*; BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 39 *et seq.*

SOUND RIVER IMPROVEMENT CO. (1904), 8 O. L. R. 128; 21 C. L. T. 349; 3 O. W. R. 601, 778.—**CAN.**

x. —.]—KAULBACH v. WOODWORTH (1915), 49 N. S. R. 46.—**CAN.**

y. —.]—DONOHUE v. QUINN (1839), 1 Craw. & D. 369.—**IR.**

a. —.]—STEVENSON v. STARK (1875), 2 J. R. 173.—**N.Z.**

b. —.]—JOHNSON v. TE WAKA (1878), 3 J. R. N. S. 105.—**N.Z.**

c. — Whether title necessarily comes in question—Plea of not guilty.]—Title to land does not, on mere suggestion, necessarily come in question under a plea of not guilty by statute. The general rule is, that it must not only be pleaded, but be verified by affidavit.—*BALL v. GRAND TRUNK RY. CO.* (1866), 16 C. P. 252.—**CAN.**

d. —.]—There are many cases in which questions of the title to land must incidentally arise, but title to land may not be in question.—

FOWLER v. FOWLER (1875), 2 Pug. 488.—**CAN.**

e. — Set-off involving question of title.]—Dft. cannot oust the jurisdiction to entertain a claim involving no question of title, by pleading a set-off that involves a question of title.—*CREIGHTON v. LINDSAY* (1882), 3 R. & G. 243.—**CAN.**

f. May entertain actions on judgments of superior courts.]—An inferior ct. has jurisdiction to entertain an action brought upon the judgment of a superior ct.—*EBERTS v. BROOKE* (1884), 1 P. R. 296.—**CAN.**

55 i. Cannot grant new trial.]—Inferior ct.s. have no power to grant new trials.—*R. v. NORTHUMBERLAND JJ.* (1826), Hilary Term. N. B. Dig. 411.—**CAN.**

55 ii. — Or set aside judgment on ground of fraud.]—An inferior ct. has not inherent jurisdiction to set aside a judgment by reason of its having been procured by fraud & to order a new

trial.—*Re NILICK v. MARKS* (1900), 31 O. R. 677.—**CAN.**

h. Whether power to dismiss action for want of jurisdiction.]—Where the ct. has jurisdiction to take evidence to establish the question of jurisdiction, it has jurisdiction to determine that the action ought to be dismissed.—*SLIPP v. MORRIS* (1906), 41 N. S. R. 87; 2 E. L. R. 218.—**CAN.**

k. To inquire into facts—To ascertain jurisdiction.]—The judge of an inferior ct. has the right at the trial of a case, where the jurisdiction of the ct. is denied, to inquire into the facts, so as to ascertain whether or not there be jurisdiction.—*Re DIXON v. SNARR'S (EXECUTOR)* (1876), 6 P. R. 336.—**CAN.**

l. —.]—Tribunals of limited jurisdiction have implied authority to receive proof of the facts on which their right to exercise their jurisdiction depends.—*R. v. CHAMBERLAIN* (1894), 10 Man. L. R. 261.—**CAN.**

Sec. 3.—Extent of: Sub-sect. 2. Sects. 4, 5 & 6: Sub-sects. 1 & 2, A. & B. (a).]

Jurisdiction of Mayor's Court, London.]—See MAYOR'S COURT, LONDON.

Jurisdiction to award costs.]—See PRACTICE & PROCEDURE.

Prohibition on excess or absence of jurisdiction.]—See CROWN PRACTICE, pp. 377 *et seq.*, *post*.

SECT. 4.—EXCLUSIVE JURISDICTION.

67. Not imported by allegation of cognisance.]—R. v. LONDON CORPN., No. 29, *ante*.

Jurisdiction of Lancaster Chancery Court.]—See Part XXI., Sect. 2, sub-sect. 1, *post*.

68. Whether exclusive—Jurisdiction tenere placita.]—CROSSE v. SMITH, No. 43, *ante*.

Jurisdiction of Stannaries Courts.]—See Part XXIII., Sect. 3, sub-sect. 11, *post*.

Jurisdiction of Admiralty Division.]—See ADMIRALTY, Vol. I., pp. 102, 103, Nos. 46–50.

Jurisdiction of Court of Chancery.]—See EQUITY.

Effect of statutes ousting jurisdiction.]—See Sect. 9, sub-sect. 1, *post*.

SECT. 5.—APPELLATE JURISDICTION.

69. How derived.]—The rule of law is, that although a *certiorari* lies, unless expressly taken away, yet an appeal does not lie, unless expressly given by statute (ABBOTT, C.J.).—R. v. HANSON (1821), 4 B. & Ald. 519; 106 E. R. 1027.

Annotations:—Consd. R. v. Birmingham JJ. (1838), 2 J. P. 424. **Refd.** R. v. Stock (1838), 8 Ad. & El. 405; R. v. Dickinson, *Ex p.* Davis (1909), 102 L. T. 48; **Furtado v. City of London Brewery Co.**, [1914] 1 K. B. 709. **Mentd.** Ash v. Lynn (1866), L. R. 1 Q. B. 270; R. v. Surrey JJ. (1869), 18 W. R. 166.

70. —.]—An appeal never lies unless it is expressly given by the statute (*per* CUR.).—R. v. CASHBURY HUNDRED JJ. (1823), 3 Dow. & Ry. K. B. 35; 1 Dow. & Ry. M. C. 485.

71. —.]—ABBOTT, C.J., says, in *R. v. Hanson*, [No. 69, *ante*], speaking, not from any authority, but from his own observation, that a right of appeal cannot be implied, but must be given by express words (LORD DENMAN, C.J.).

The dictum in *R. v. Hanson*, that a *certiorari* lies unless expressly taken away, but an appeal does not lie unless expressly given, seems to be clear law (PATTESON, J.).—R. v. STOCK (1838), 8 Ad. & El. 405; 3 Nev. & P. K. B. 420; 1 Will. Woll. & H. 394; 7 L. J. M. C. 93; 112 E. R. 892. **Annotations:—Refd.** R. v. Arkwright (1848), 12 Q. B. 960. **Mentd.** R. v. Surrey JJ. (1869), 18 W. R. 166.

72. —.]—The creation of a right of appeal is an act which requires legislative authority. Neither the inferior nor the superior tribunal, nor both combined, can create such a right, it being essentially one of the limitation & of the extension of jurisdiction.—A.-G. v. SILLEM (1864), 10 H. L. Cas. 704; 4 New Rep. 29; 33 L. J. Ex. 209; 10 L. T. 434; 10 Jur. N. S. 446; 12 W. R. 641; 11 E. R. 1200, H. L.

Annotations:—Consd. National Telephone Co. v. Postmaster General, [1913] 2 K. B. 614. **Refd.** R. v. Stephens (1866),

7 B. & S. 710; *Waterhouse v. Gilbert* (1885), 15 Q. B. D. 569; *Darlow v. Shuttleworth*, [1902] 1 K. B. 721. **Mentd.** R. v. Rumble (1864), 4 F. & F. 175; *Unwin v. Clark* (1866), 7 B. & S. 400; *R. v. West Riding of Yorkshire County Council*, [1906] 2 K. B. 676.

73. —.]—If there is an appeal it must be shown. It is a principle of law that you cannot have an appeal unless there is either a pre-existing right of appeal at law or a right of appeal conferred by statute (LORD HALSBURY).—SCOTTISH WIDOWS' FUND LIFE ASSURANCE SOCIETY v. BLENNERHASSETT, [1912] A. C. 281; 81 L. J. P. C. 160; 106 L. T. 4; 28 T. L. R. 187, H. L.

74. —.]—The rule of law is that although a *certiorari* lies unless expressly taken away, yet an appeal does not lie unless expressly given by statute (SWINFEN EADY, L.J.).—FURTADO v. CITY OF LONDON BREWERY Co., [1914] 1 K. B. 709; 83 L. J. K. B. 255; 110 L. T. 241; 30 T. L. R. 177; 58 Sol. Jo. 270; 6 Tax Cas. 382, C. A.

75. —.]—If a cause involves matter which can only be properly tried by a jury, &, on the hearing in the ct. below, the judge, by the consent of the parties, decides the question at issue:—Held: this decision cannot be made the subject of appeal, unless the party dissatisfied can show that the cause is one fit for the decision of the ct. without directing an issue.—STEWART v. FORBES (1849), 1 Mac. & G. 137; 1 H. & Tw. 461; 19 L. J. Ch. 133; 13 Jur. 523; 41 E. R. 1215, L. C. **Annotations:—Consd.** *Dudgeon v. Thomson* (1854), 24 L. T. O. S. 39. **Refd.** *Pisani v. A.-G. for Gibraltar* (1874), L. R. 5 P. C. 516.

76. How taken away.]—The subject cannot be deprived of his right to appeal by any words in the King's grant to that purpose, much less if the grant be silent in that particular.—CHRISTIAN v. CORREN (1716), 1 P. Wms. 329; 24 E. R. 411, P. C.

Annotations:—Consd. R. v. Alloo Paroo (1847), 5 Moo. P. C. C. 296. **Refd.** *Re Nahon & Pariente* (1832), 2 Knapp, 66. **Mentd.** *Plunkett v. Burlington* (1837), 1 Jur. 376.

77. —.]—A right of appeal to a higher tribunal is a matter of substance, & not of procedure, & such a right, unless expressly or by necessary intendment, retrospectively abolished, is not taken away by subsequent legislation.—COLONIAL SUGAR REFINING Co. v. IRVING, [1905] A. C. 369; 74 L. J. P. C. 77; 92 L. T. 738; 21 T. L. R. 513, P. C.

SECT. 6.—WHEN PROCEEDINGS MUST SHOW.

SUB-SECT. 1.—SUPERIOR COURTS.

78. General rule.]—PEACOCK v. BELL & KENDAL, No. 26, *ante*.

See, generally, PRACTICE & PROCEDURE.

SUB-SECT. 2.—INFERIOR COURTS.

A. Style of.

79. Must show by what authority court was held—Whether by custom or letters patent.]—In reciting the style of an inferior ct., it must appear by what authority it is held, whether by custom or letters patent.—HALMAN v. COLLINS (1596), Cro. Eliz. 489; 78 E. R. 740; *sub nom.* HOLMAN

PART IV. SECT. 4.

m. Conclusiveness of judgment.]—When a ct. has exclusive jurisdiction, a matter belonging to that exclusive jurisdiction can never be discussed directly in any other ct., whether the ct. possessed of exclusive authority

has actually taken cognisance of the matter in contest or not; but such matter may be discussed in another ct. incidentally or indirectly, as arising out of a subject-matter over which such other ct. has original & direct cognisance. If previous to such inci-

dental discussion of the question, the question has been decided directly in a ct. of exclusive jurisdiction, such decision will be conclusive, at least, against the parties thereto, or those who derive under them.—MAINGAY v. GAIHAN (1793), Ridg. L. & S. 70.—IR.

v. COLLINS, Moore, K. B. 422; Noy, 35; Owen, 50.

Annotation.—*Reid*. Groenvelt v. Burwell (1700), 1 Salk. 144.

80. —.]—The style of an inferior ct. must show by what authority, & state the names of the judges before whom, it is held.—*JERRET v. CALDEWELL* (1607), Cro. Jac. 184; 79 E. R. 160.

81. —.]—The style of an inferior ct. ought to show by what authority it was held.—*JOHNSON v. UNDERWOOD* (1618), Cro. Jac. 493; 79 E. R. 421.

82. Must give names of judges before whom court was held.—*JERRET v. CALDEWELL*, No. 80, *ante*.

83. Need not show that court was held within jurisdiction.—It need not be shown in setting forth the style of an inferior ct. that it was held within the jurisdiction.

A declaring in the Stannaries Ct. must allege *pltf.* to be a tinner.

Where you declare in the inferior ct. you ought to lay the fact, or cause of action, to have arisen within the jurisdiction (*per* 'UR.).—*REIGNOL v. TAYLOR* (1702), 7 Mod. Rep. 103; Holt, K. B. 185; 87 E. R. 1124.

84. Necessity for showing — In action in superior court.—For escape from custody under process of inferior court.—*Qu.*: in an action for an escape from custody under process of an inferior ct., whether it be necessary to state in the declaration by what authority the ct. was held.—*MICHELSON v. CAWSEY* (1703), 6 Mod. Rep. 72; 87 E. R. 830.

B. Proceedings in.

(a) In General.

85. General rule.—An offence inquirable in a leet must be stated to have been committed within its jurisdiction.—*DEWELL v. SANDERS* (1618), Cro. Jac. 490; 79 E. R. 419.

Annotations.—*Mentd.* Hannam v. Mockett (1824), 2 B. & C. 934; Taylor v. Newman (1863), 4 B. & S. 89; Nye v. Niblett (1917), 16 L. G. R. 57.

86. —.]—Every superior ct. must know what is the jurisdiction & legal course of proceeding in cts. throughout the realm. It concludes nothing, however, as to cts. which owe their jurisdiction, not to the common law, but to particular charters, or to prescriptions, which presuppose such charters, & where the extent of jurisdiction, & the course of proceeding, may depend entirely upon the terms in which the franchise was originally granted (LORD ELLENBOROUGH, C.J.).—*WILSON v. HOBDAV* (1815), 4 M. & S. 120; 105 E. R. 780.

Annotation.—*Reid*. Thompson v. Farden (1840), 8 Dowl. 813.

87. —.]—Where an examination of a soldier, taken before two magistrates, was tendered in evidence to prove his settlement, but it did not appear by the examination itself or by other proof, that the soldier, at the time when he was examined, was quartered in the place where the justices had jurisdiction:—*Held*: it was not admissible.

The rule, that in inferior courts & proceedings by magistrates the maxim *omnia præsumuntur rite esse acta* does not apply to give jurisdiction, has never been questioned. Here, then, the jurisdiction should, at all events, have appeared on the face of the examination, supposing proof of it *aliunde* not to have been necessary (HOLROYD, J.).—*R. v. ALL SAINTS, SOUTHAMPTON* (1828),

7 B. & C. 785; 1 Man. & Ry. K. B. 663; 1 Man. & Ry. M. C. 351; 6 L. J. O. S. M. C. 53; 108 E. R. 916.

Annotations.—*Consd.* Taylor v. Clemson (1844), 11 Cl. & Fin. 610; London Corpn. v. Cox (1867), L. R. 2 H. L. 239. *Reid*. R. v. Stainforth (1845), 11 Q. B. 63; Buccleuch v. Metropolitan Board of Works (1870), L. R. 5 Exch. 221; Fellingham v. Victorian Railways Comr., [1900] A. C. 452; *Re* Cundall & Vavasour (1906), 95 L. T. 483. *Mentd.* Parkes v. Parkes (1852), 2 Rob. Eccl. 518; Baker v. Cayo (1857), 1 H. & N. 674; R. v. Widdop (1872), 21 W. R. 176.

88. —.]—Where it appears upon the face of the proceedings that the inferior ct. has jurisdiction, every intendment will be made in order to support them; but if it do not so appear, or if the point whether or not the inferior ct. has jurisdiction, be left in doubt, no such intendment shall be made (TINDAL, C.J.).—*DEMPSTER v. PURNELL* (1841), 3 Man. & G. 375; 4 Scott, N. R. 30; 11 L. J. C. P. 33; 133 E. R. 1189.

89. —.]—An Act of Parliament authorised a railway co. to take lands on payment or tender of such sums as should have been agreed upon, or awarded by a jury in manner directed by the Act; & by the sect. of the Act for settling differences between the co. & owners & occupiers of, or persons interested in, lands to be taken, it was enacted that if any such person should not agree with the co. as to the amount of purchase-money, or should refuse to accept such purchase-money as should be offered by the co., or should, for 21 days after notice to him in writing, neglect or refuse to treat, or should not agree with the co. for the sale of his interest, &c., the co. might issue a warrant to the sheriff to summon a jury to assess the sum to be paid for the purchase of the lands; & the sheriff should give judgment for such sum. The co. issued a warrant, purporting to be pursuant to the powers given by the Act, & requiring the sheriff to summon a jury to assess the value of *pltf.*'s land, etc. The jury was summoned, & assessed the value, the owner of the land attending, & protesting that the co. had no right to take his lands, as not being described in the sched. to the Act. An inquisition was recorded, purporting to be taken "pursuant to the Act, on the oaths of jurors duly impanelled, in pursuance of the warrant to the inquisition annexed, who assessed the sum to be paid for the property particularised in the warrant, & authorised by the Act to be taken for the railway; whereupon the sheriff, in pursuance of the Act, gave judgment for that sum." Neither the warrant nor inquisition stated that the owner had refused to treat, or had not agreed with the co. for the sale of his land, or that the co. had served on him the notice required by the Act to be given; but it appeared *aliunde* that he did not agree with the co., & that he had received the requisite notices:—*Held*: (1) sufficient facts were stated in the inquisition & warrant to show the jurisdiction of the sheriff & jury.

Now it cannot be doubted that where a ct. of limited jurisdiction, limited either in point of place or of subject-matter, assumes to proceed, its judgment must set forth such facts as show that it has jurisdiction, & must show also in what respect it has jurisdiction (LORD BROUGHAM).

(2) The impanelling a jury, & an assessment by them, being facts inconsistent with an agreement, necessarily implied non-agreement; & no inquisition would be defective for not stating a fact

PART IV. SECT. 6, SUB-SECT. 2.—

B. (a).

85 i. General rule.—Process must show jurisdiction on its face.—*SYDNEY & LOUISBURG RY. CO. v. KIMBER* (1891), 23 N. S. R. 338.—*CAN.*

85 ii. —.]—*BEATON v. SJOLANDER* (1903), 9 B. C. R. 439.—*CAN.*

85 iii. —.]—*R. v. STRATON, Ex p. PORTER* (1904), 30 N. B. R.

388.—*CAN.*

85 iv. —.]—*ROGERS v. DUNBAR* (1905), 37 N. B. R. 33.—*CAN.*

85 v. —.]—*R. v. MOHUGH* (1907), 13 B. C. R. 224.—*CAN.*

SECT. 6.—When proceedings must show: Sub-sect. 2, B. (a) & (b), C.]

which was necessarily implied by those that are stated. (3) Notice was waived by the party's appearing, not protesting for want of notice.—*TAYLOR v. CLEMONS* (1844), 11 Cl. & Fin. 610; 8 Jur. 833; 8 E. R. 1233, H. L.

Annotations:—*As to* (1) **Consd.** *Ostler v. Cooke* (1849), 13 Q. B. 143. **Refd.** *R. v. Pomfret Liberty of Honor, Coroner* (1844), 8 J. P. 676; *R. v. Stainforth* (1847), 11 Q. B. 66; *R. v. Aberdare Canal Co.* (1850), 14 Jur. 735; *Ostler v. Cooke* (1852), 18 Q. B. 831; *R. v. Hodgson* (1852), 7 Exch. 916. *As to* (3) **Refd.** *R. v. Preston* (1848), 12 Q. B. 816. **Generally, Mentd.** *Sparrow v. Oxford, etc.*, Ry. (1852), 2 De G. M. & G. 94.

90. —[—]—A declaration in debt, in an inferior ct. of the borough of L., alleged that debt., at L., within the jurisdiction of the ct., was indebted to pltf. in £10 for money found to be due on an account then stated between them, to be then & there paid on request, with non-payment & a refusal, to wit at L. aforesaid, within the jurisdiction to the damage of pltf. within the jurisdiction. The marginal venue was laid at L.:—**Held:** had, after verdict, for not showing that the cause of action arose within the jurisdiction.—*COOK v. M'PHERSON* (1846), 8 Q. B. 1030; 15 L. J. Q. B. 283; 10 Jur. 1052; 115 E. R. 1161.

91. —[—]—It is sufficient, if a ct. of limited jurisdiction state, upon the face of its proceedings, the facts which show that it had jurisdiction; it need not state other facts, although if they did not also exist, the adjudication would not be binding.

—*OSTLER v. COOKE* (1819), 13 Q. B. 113; 18 L. J. Q. B. 185; 13 L. T. O. S. 66; 13 J. P. 695; 13 Jur. 583; 116 E. R. 1217; *affd.* on other grounds (1852), 18 Q. B. 831, Ex Ch.

Annotation:—**Refd.** *R. v. Aberdare Canal Co.* (1850), 14 Jur. 735.

92. —[—]—All judicial acts by persons whose authority is limited as to locality must, on the face of them, purport to be done within the locality.

R. v. TOTNESS (1849), 11 Q. B. 80; 3 New Sess. Cas. 356; 18 L. J. M. C. 46; 12 L. T. O. S. 373; 13 J. P. 283; 13 Jur. 168; 116 E. R. 406.

Annotations:—**Refd.** *R. v. Crowan* (1849), 14 Q. B. 221; *Parkes v. Parkes* (1852), 2 Rob. Eccl. 518; *Staverton v. Ashburton* (1855), 4 E. & B. 526.

93. —[—]—It is necessary for a party who relies on the decision of an inferior tribunal to show that the proceedings were within the jurisdiction of the ct. (*ALDERSON, B.*)—*STANTON v. STYLES* (1850), 5 Exch. 578; 155 E. R. 253.

94. Effect of showing proceedings—Regular in form.—[—]—When a conviction or order of justices is returned to this ct., & the proceedings are regular in form & in practice, & the case one over which the justices had jurisdiction, the ct. will not hear affidavits impeaching their decision on the facts, nor, if they return the evidence, will it review their judgment thereupon.

The test of jurisdiction under this rule is, whether or not the justices had power to enter upon the inquiry, not whether their conclusions, in the course of it, were true or false.

It may be shown by affidavit that they had no authority to commence an inquiry inasmuch as the question brought before them was not one to which their jurisdiction extended; & this, although, by mis-statement, they have made the proceedings, on the face of them, regular.

Where an order of justices for delivering up a house to parish officers under Poor Relief Act, 1819 (c. 12), ss. 24, 25, was correct in form, & made

on a proper information, summons, & hearing, the ct. on *certiorari*, refused to inquire into the reasonableness of their judgment, either on affidavit, or on the evidence returned with the proceedings.—*L. v. BOLTON* (1841), 1 Q. B. 66; *Arn. & H.* 261; 4 Per. & Dav. 679; 10 L. J. M. C. 49; 5 J. P. 370; 5 Jur. 1154; 113 E. R. 1051.

Annotations:—**Consd.** *R. v. Buckinghamshire JJ.* (1843), 3 Q. B. 800. **Distd.** *Re Chabot* (1848), 17 L. J. Q. B. 336. **Consd.** *Thompson v. Ingham* (1850), 14 Q. B. 710; *R. v. Badger* (1856), 6 E. & B. 137; *R. v. Nunneley* (1858), 6 E. & B. 852; *Ex p. Vaughan* (1866), L. R. 2 Q. B. 114. **Apld.** *Colonial Bank of Australasia v. Willan* (1874), L. R. 5 P. C. 417. **Consd.** *Huxley v. London Extension Ry.*, *Hughes v. Merrett*, *Wood v. Madge* (1886), 17 Q. B. D. 373; *Ex p. Anthers* (1889), 58 L. J. M. C. 62. **Apld.** *R. v. Morn Hill Camp Commanding Officer, Ex p. Ferguson*, [1917] 1 K. B. 176. **Refd.** *R. v. Grant* (1849), 14 Q. B. 43; *Newbould v. Coltman* (1851), 6 Exch. 189; *R. v. Buchanan* (1851), 15 J. P. Jo. 783; *Ex p. Goswood* (1853), 17 Jur. 1163; *R. v. Wood* (1855), 5 E. & B. 49; *R. v. St. Olave's District Board* (1857), 8 E. & B. 529; *R. v. Metropolitan*

Board of Works (1870), L. R. 5 Exch. 221; *Révell* *Blake* (1872), L. R. 7 C. P. 300; *R. v. Colam* (1872), 36 J. P. 660; *Ex p. Huguet* (1873), 29 L. T. 41; *Lovesy v. Stallard* (1874), 30 L. T. 792; *Ex p. Wake* (1883), 11 Q. B. D. 291; *R. v. Brakenridge* (1884), 48 J. P. 293; *R. v. Central Criminal Court JJ.* (1886), 55 L. J. M. C. 183; *R. v. Farmer*, [1892] 1 Q. B. 637; *Bache v. Billingham* (1893), 63 L. J. M. C. 1; *R. v. Clerkenwell General Taxes Comrs.*, [1901] 2 K. B. 879; *R. v. Johnson, Ex p. Thornely* (1905), 92 L. T. 654; *R. v. Woodhouse*, [1906] 2 K. B. 501; *R. v. Carson Roberts*, [1907] 2 K. B. 878; *R. v. Bloomsbury Income Tax Comrs.*, [1915] 3 K. B. 768. **Mentd.** *R. v. Higgins* (1843), 17 L. J. Q. B. 63; *Allen v. Sharp* (1848), 2 Exch. 352; *Feuron v. Norval* (1848), 12 E. & B. 127; *Messon v. Alcard* (1850), 15 E. & B. 45; *R. v. Simmonds* (1859), 8 Cox. C. C. 190; *Re Thompson* (1861), 6 H. & N. 193; *Osgood v. Nelson* (1869), 10 B. & S. 119; *Ussil v. Hales* (1878), 3 C. P. D. 319; *R. v. Whitfield* (1885), 15 Q. B. D. 122; *Livingstone v. Westminster Corpn.*, [1904] 2 K. B. 109; *Re Wilson*, [1916] 1 K. B. 382.

—[—]—*See, also*, No. 87, *ante*.

What must be shown.—[—]—*See* Sub-sect. 2, B. (b), *post*.

Procedure in county court.—[—]—*See* COUNTY COURTS, Vol. XIII., pp. 492 *et seq.*

Procedure in Mayor's Court, London.—[—]—*See* MAYOR'S COURT,

See, generally, PRACTICE & PROCEDURE.

(b) What Declaration sufficient.

95. General rule.—*REIGNOL v. TAYLOR*, No. 83, *ante*.

96. —[—]—In inferior cts. every thing that makes the gist of the action must be laid within the jurisdiction; otherwise of matter of aggravation.—*STANNIAN v. DAVIS* (1701), 1 Salk. 404; 6 Mod. Rep. 223; 11 Mod. Rep. 7; *Holt, K. B.* 13; 91 E. R. 350; *sub nom.* *DAVIS v. STANNION*, 2 Ld. Raym. 1040.

Annotations:—**Refd.** *Emery v. Barlett* (1729), 2 Stra. 827. **Mentd.** *Harvey v. Phillips* (1743), 2 Atk. 541; *Woodward v. Walton* (1807), 2 Bos. & P. N. R. 476.

97. Parties.—[—]—It must appear to the ct. that the parties were within the jurisdiction when the cause of action arose.—*TUCKER v. CROSBY* (1809), 2 Taunt. 169; 127 E. R. 1041.

Annotation:—**Mentd.** *Younger v. Wilsby* (1816), 6 Taunt. 452.

98. Assets within jurisdiction.—[—]—In debt in an inferior ct. against an heir on an obligation of his ancestor, it must be shown that he hath assets within the jurisdiction.—*BOURN v. CARRINGTON* (1618), (Cro. Jac. 502; 79 E. R. 429).

99. Land within jurisdiction.—[—]—A writ of false judgment was brought to reverse a recovery suffered in an inferior ct. & exception was taken because it was *de tenementis in R.* & did not say

PART IV. SECT. 6, SUB-SECT. 2.—B. (b).

95 i. General rule.—[—]—In a declaration in an inferior ct., it is not necessary to allege that the demand arose within the jurisdiction of the ct.—*STEPHENSON v. McLELLAN* (1848), 1 All. 19.—**CAN.**

infra jurisdictionem:—*Held*: there is a difference between personal actions & real actions; for personal actions that are transitory must be alleged *infra jurisdictionem*, but in real actions it need not.

Another objection was taken because there was an imparlance *ad primum Cur' ten'*, & did not say *scil.* such a day:—*Held*: admitting that it be an error, yet all errors of that nature were saved by the party's appearance.—ANON. (1673), 1 Freem. K. B. 319; 89 E. R. 236.

Annotation:—*Refd.* Rowland v. Veale (1774), 1 Cowp. 18.

100. Replevin.—In replevin in an inferior ct., the declaration must allege the place where to be within the jurisdiction.—QUARLES v. SEARLE (1605), Cro. Jac. 95; 79 E. R. 82.

Annotation:—*Mentd.* Sutton v. Fenn (1772), 3 Wils. 339.

101. Contract.—In suit in inferior ct., it must appear the contract was within the jurisdiction.—STEDMAN v. ROBINSON (1701), 12 Mod. Rep. 598; 88 E. R. 1544.

102. Payment of wages.—In orders for paying wages it ought to appear that the service was relating to husbandry.

The practice is, if an order be for paying wages, it is supposed to be such as the justices have power over (MYRE, J.). —R. v. HELLING (1716), 1 Stra. 8; 93 E. R. 350.

Annotations:—*Refd.* R. v. Cleg (1721), 1 Stra. 475; R. v. All Saints, Southampton (1828), 7 B. & C. 785.

103. Locus in quo.—In an *indebitatus assumpsit* in an inferior ct. for permitting debt. to use a pond to wash his horses, it must appear that the pond was within the jurisdiction.—WINFORD v. POWELL (1712), 2 Ld. Raym. 1310; 92 E. R. 357.

Annotation:—*Mentd.* Ricketts v. Bodenham (1836), 4 Ad. & El. 433.

104. Debt.—In *assumpsit* in an inferior ct. for money laid out, both the promise & the expenditure must be alleged within the jurisdiction.—HEAVEN v. DAVENPORT (1722), 11 Mod. Rep. 365; 88 E. R. 1092.

105.—[In an action stating that debt. is indebted to pltf. within the jurisdiction of the county ct. for the wages of & due & owing to pltf. within the jurisdiction, as servant of debt., is a sufficient allegation of the cause of action having accrued within the jurisdiction.—CHITTY v. DENDY (1835), 3 Ad. & El. 319; 1 Har. & W. 169; 4 L. J. K. B. 195; 111 E. R. 435.

Annotation:—*Refd.* Cook v. M'Pherson (1816), 8 Q. B. 1030. —[See, also, No. 90, ante.

106. Account stated.—A declaration in an inferior ct., that debt. became indebted upon an account stated within the jurisdiction, is sufficient.—SPACKMAN v. HUSSEY (1723), 8 Mod. Rep. 77; 88 E. R. 61.

107.—[In an action upon an account stated, the items need not be laid to have become due *infra jurisdictionem* in an inferior ct.—EMERY v. BARLETT (1729), 2 Stra. 827; 2 Ld. Raym. 1555; 93 E. R. 876; *sub nom.* HEMRY v. BERKLET, 1 Barn. K. B. 128.

Annotations:—*Refd.* Williams v. Gibbs (1836), 5 Ad. & El. 208; Kemp v. Clark (1848), 17 L. J. Q. B. 305. *Mentd.* Trueman v. Hurst (1785), 1 Term Rep. 40; Williams v. Moor (1843), 11 M. & W. 256.

108. Goods sold & delivered.—In a base ct. the declaration must allege that the goods were sold & delivered within the jurisdiction, as well as that debt. promised within it.—WALDOCK v. COOPER (1754), 2 Wils. 16; 95 E. R. 661.

109. Money had & received.—In an inferior

ct. the declaration must allege that the money was had & received within the jurisdiction, as well as that debt. promised to pay within it.—TREVOR v. WATL. (1786), 1 Term Rep. 151; 99 E. R. 1024.

Annotations:—*Expld.* Ricketts v. Bodenham (1836), 4 Ad. & El. 433; Bruce v. Wait (1840), 1 Man. & G. 1. *Refd.* Evans v. Munkley (1811), 4 Taunt. 48; Winsor v. Dunford (1848), 12 Q. B. 603; London Corp'n. v. Cox (1867), L. R. 2 H. L. 239. *Mentd.* Bishop v. Kaye (1820), 3 B. & Ald. 605; Leach v. Thomas (1837), 5 Dowl. 612; Strother v. Hutchinson (1837), 4 Bing. N. C. 83; Campbell v. R. (1847), 11 Q. B. 814.

110. Action for freight—Delivery within jurisdiction.—Where the indorsee of a bill of lading, or the consignee other than the original charterer, becomes liable for freight, such liability results, not from the original contract of affreightment, but from a new contract, the consideration for which is the delivery of the goods. Therefore, in an action of *assumpsit* for freight, brought within a limited jurisdiction & grounded on such liability, the declaration is sufficient if it state as consideration a delivery on request, averring such delivery to have taken place within the jurisdiction, though the goods are not alleged to have been carried within it. In such an action, the declaration stated that debt. was indebted to pltf. for freight due to him for the carriage of certain goods by pltf. before that time carried in a ship from M. to H., & then delivered to debt. within the jurisdiction at debt.'s request:—*Held*: the delivery & request, though not the carrying, appeared to have taken place within the jurisdiction, & the count was good.—KEMP v. CLARK (1818), 12 Q. B. 617; Cox, M. & H. 190; 17 L. J. Q. B. 305; 12 L. T. O. S. 122; 12 Jur. 676; 116 E. R. 1012.

Annotation:—*Mentd.* Furness, Withy v. White, [1891] 1 Q. B. 483.

111. Order for expenses for burial of bodies cast on shore.—A justice's order, made under Burial of Drowned Persons Act, 1808 (c. 75), s. 6, after stating that he had inquired into & ascertained on oath the costs & expenses, amounting to £1 5s., incurred by churchwardens & overseers by reason of a dead human body having been found & brought on to the shore within their parish, directed the county treasurer to pay to them the said sum according to the above Act:—*Held*: the order was bad, because it did not show that the expenses in question were proper & necessary expenses incurred in or about the execution of the Act, & therefore did not sufficiently state facts to show, or from which it could be inferred, that the justice had jurisdiction to make it.—R. v. KENT COUNTY TREASURER (1889), 22 Q. B. D. 603; 58 L. J. M. C. 71; 60 L. T. 426; 53 J. P. 279; 37 W. R. 619; 16 Cox, C. C. 583.

Procedure in county court.—See COUNTY COURTS, Vol. XIII, pp. 492 *et seq.*

Procedure in Mayor's Court, London.—See MAYOR'S COURT, LONDON.

See, generally, PRACTICE & PROCEDURE.

C. Action on Judgment in.

112. Whether jurisdiction must be shown—By plaintiff.—In debt, on a judgment for pltf. in an inferior ct., the declaration must allege that the cause of action in the original suit arose within the jurisdiction of the inferior ct.—READ v. POPE (1831), 1 Cr. M. & R. 302; 1 Tyr. 403; 3 L. J. Ex. 312; 119 E. R. 1095.

Annotation:—*Refd.* London Corp'n. v. Cox (1867), L. R. 2 H. L. 239.

shown.—In an action upon a foreign judgment rendered in an inferior ct., it is not necessary to aver that the cause of action arose within the jurisdiction of that ct.—PRENTISS v. BEFMEK (1847), 3 U. C. R. 270.—CAN.

1021. Payment of wages.—To enable a seaman to sue for & recover his wages the complaint must show all the facts & circumstances which give the ct. jurisdiction, & unless such complaint does disclose all things necessary to give jurisdiction it cannot be supple-

mented by evidence, & the judgment will be set aside.—*Ex p.* ANDREWS (1897), 34 N. B. R. 315.—CAN.

PART IV. SECT. 6, SUB-SECT. 2.—C.

1121. Whether jurisdiction must be

Sect. 6.—When proceedings must show: Sub-sect. 2, C. & D. Sects. 7, 8 & 9: Sub-sect. 1.]

113. — By defendant.]—Deft. in an action in an inferior ct. may avail himself of the judgment of that ct., without showing that the ct. was rightly holden, or had jurisdiction.

It is laid down, in divers cases which have been cited, that if pltf. in an action in an inferior ct. plead a judgment in that action, he must show the right of holding the ct., & that the cause of action arose within its jurisdiction; but it is in no case laid down that it is incumbent upon deft. in an action in an inferior ct., who pleads a judgment in that action (LEE, C.J.).—MURRAY v. WILSON (1752), Say. 17; 1 Wils. 316; 96 E. R. 788. *Annotation:—*Refd. Read v. Pope (1834), 1 Cr. M. & R. 302. *See, generally, PRACTICE & PROCEDURE.*

D. Justification of Acts under Process of.

Liability of party executing process—Where no jurisdiction.]—*See* Nos. 23, *ante*, 154, 250, *post*.

114. Whether jurisdiction must be shown—By officer of court.]—Where an officer justifies an act done by the command of an inferior ct., he ought to show precisely that it was in a case within their jurisdiction. If the inferior ct. had jurisdiction, he is excused whether his act be just or unjust; if his ct. had no jurisdiction, the officer by obeying the ct., subjects himself to an action of false imprisonment.—DYE & OLIVE'S CASE (1611), March, 117; 82 E. R. 437.

115. —.]—An officer of the ct. who justifies under process of an inferior ct. should show its jurisdiction, *scil.* by grant or prescription, but a stranger need not do so, neither need one who justifies as a justice of the peace set forth his commission.—CHUTE v. ALPORT (1666), 1 Sid. 311; 82 E. R. 1125.

116. —.]—Officer may justify by the writ without the judgment, but pltf. cannot.—COTES v. MICHILL (1681), 3 Lev. 20; 83 E. R. 555. *Annotations:—*Refd. Andrews v. Marris (1841), 1 Q. B. 3; Jarmain v. Hooper (1843), 7 Scott, N. R. 663; Gosset v. Howard (1847), 10 Q. B. 411. *Mentd.* Moravia v. Sloper (1737), Willes, 30; Aspey v. Jones (1884), 48 J. P. 613.

117. —.]—In trespass for taking goods, the officer need only show a writ of execution; otherwise of a common person, unless in aid of the officer by his command. The command is traversible.—BRITTON v. COLE (1698), Comb. 469; 1 Ld. Raym. 305; 12 Mod. Rep. 175; 1 Salk. 408; Carth. 441; 90 E. R. 596.

*Annotations:—*Refd. Watkins v. West (1727), 2 Ld. Raym. 1530; Moravia v. Sloper (1737), Willes, 30; Morse v. James (1738), Willes, 122; Parsons v. Lloyd (1772), 2 Wm. Bl. 845; Howard v. Gosset, Gosset v. Howard (1847), 6 State T. N. S. 319. *Mentd.* Barker v. Braham (1773), 3 Wils. 368; R. v. Cooke (1825), McLe. & Yo. 196.

118. —.]—When pltf. below pleads a justification under process of an inferior ct., he must show that the cause of action arose within the jurisdiction of that ct.; but the officer of the ct. need not. *Qu.*: whether it be not necessary to state in such a plea the nature & extent of the jurisdiction of the ct. below.—MORAVIA v. SLOPER (1737), Willes, 30; 2 Com. 571; 125 E. R. 1039.

*Annotations:—*Refd. Morse v. James (1738), Willes, 122; Titley v. Foxall (1758), Willes, 688; Goodwin v. Gibbons (1767), 4 Burr. 2107; Evans v. Munkley (1811), 4 Taunt. 48; Calder v. Halket (1840), 3 Moo. P. C. C. 28; Dempster v. Purnell (1841), 3 Man. & G. 375; Edmunds v. Pinniger (1845), 7 Q. B. 558; Watson v. Bodell (1845), 14 M. & W.

57; Fitzjohn v. Mackinder (1861), 9 C. B. N. S. 505; London Corp. v. Cox (1867), L. R. 2 H. L. 239; Hill v. Metropolitan Asylum District Managers (1879), 4 Q. B. D. 433. *Mentd.* Martin v. Nicolls (1830), 3 Sim. 458; Andrews v. Marris (1841), 1 Q. B. 3; Pease v. Chaytor (1863), 3 B. & S. 620.

119. —.]—(1) Though an officer is justified in acting under erroneous process, it must be in a case where the ct., out of which it is issued, had jurisdiction.

(2) Deft. justified as an officer of an inferior ct. for trying causes touching mines & miners within a certain district:—*Held*: the plea was bad because it did not allege that deft. below was a miner at the commencement of the suit below but only when the execution issued.

(3) If pltf. in an action in an inferior ct., or a mere stranger, justify under process, he must set forth the proceedings at length, otherwise the plea is bad not only as it respects him but the officers of the ct. also who join with him in the plea.—MORSE v. JAMES (1738), Willes, 122; 7 Mod. Rep. 215; 125 E. R. 1089.

*Annotations:—*As to (1) *Consd.* Andrews v. Marris (1841), 1 Q. B. 3. *Apld.* Humphries v. Longmore (1818), 6 C. B. 363. *Refd.* Howard v. Gosset (1845), 10 Q. B. 359. *Generally, Refd.* Dempster v. Purnell (1841), 11 L. J. C. P. 33. *Mentd.* France v. Parry (1834), 1 Ad. & El. 615.

120. — Issuing warrant.]—Judgment was entered in a cause "for debt & costs, to be paid at 10s. a month until discharge, otherwise execution to issue." On default in payment of an instalment, the clerk of the ct., at the instance of pltf. in the cause, without further hearing or order from the ct. but according to practice, issued a warrant to the serjeant of the ct. to arrest the debtor for the whole debt & costs; & the arrest was made:—*Held*: the prospective order, engrafted on the judgment, for execution to issue on default, being void, the clerk was not protected by it, but was liable in an action for false imprisonment, but the serjeant was not liable, being protected by the warrant.—ANDREWS v. MARRIS (1841), 1 Q. B. 3; 1 Gal. & Dav. 268; 10 L. J. Q. B. 225; 6 Jur. 58; 113 E. R. 1030.

*Annotations:—**Distd.* Carratt v. Morley (1841), 1 Q. B. 18; Dews v. Riley (1851), 11 C. B. 431. *Refd.* London Corp. v. Cox (1867), L. R. 2 H. L. 239; Aspey v. Jones (1884), 48 J. P. 613; Speers v. Daggers (1885), Cab. & El. 503. *Mentd.* Mill v. Hawker (1875), L. R. 10 Exch. 92; Hill v. Metropolitan Asylum District Managers (1879), 4 Q. B. D. 433.

121. — Executing warrant.]—ANDREWS v. MARRIS, No. 120, *ante*.

122. —.]—M. summoned C. in a ct. of requests, & execution was ordered against C. A precept was issued, & delivered to the serjeant, who arrested C. C. sued the serjeant for false imprisonment. It was not shown that any evidence was given before the ct. to bring C. within their jurisdiction:—*Held*: the serjeant was not liable.—CARRATT v. MORLEY (1841), 1 Q. B. 18; 1 Gal. & Dav. 275; 10 L. J. Q. B. 259; 6 Jur. 259; 113 E. R. 1030.

*Annotations:—*Refd. Coomer v. Latham (1847), 16 M. & W. 713; Dews v. Riley (1851), 11 C. B. 431; London Corp. v. Cox (1867), L. R. 2 H. L. 239; Aspey v. Jones (1884), 48 J. P. 613. *Mentd.* Green v. Elgie & Toulmin (1813), 5 Q. B. 99; R. v. Davies (1861), 4 L. T. 559; Pease v. Chaytor (1863), 3 B. & S. 620; Saunders v. Swansea Finance Co. & Home (1905), 21 T. L. R. 317.

123. —.]—A *levari facias* issued out of a hundred ct., tested & returnable on days not being ct. days, is void, & consequently affords

n. Justification must be pleaded.]

A bailiff who has seized under an execution issued by the judge of an inferior ct. in a matter beyond the ct.'s jurisdiction, must plead his justification specially.—DAVIS v. MOORE (1846), 2 U. C. R. 180.—CAN.

PART IV. SECT. 6, SUB-SECT. 2.—D.

114 i. Whether jurisdiction must be shown—By officer of court.]—Pltf. declared in trespass for breaking & entering his close in N. district. Deft. pleaded that, being bailiff of a ct. in the district of B., he committed the

alleged trespass in discharge of his duty as such. Demurrer to the plea, on the ground that it was not shown by what authority deft., though a bailiff in the district of B., acted in the district of N., where the trespass was laid:—*Held*: plea bad.—DAVIS v. MOORE (1846), 4 U. C. R. 209.—CAN.

no justification in trespass for seizing goods under it.—*HUMPHRIES v. LONGMORE* (1848), 6 C. B. 363; 17 L. J. C. P. 328; 136 E. R. 1291.

124. ———.—]—The clerk of the county ct. is a mere ministerial officer, to carry into effect the order of the judge, & is not liable in trespass for the imprisonment of a party under a warrant of the ct. signed & issued by him in the mere performance of the duty cast upon him by the statute; although the order of the judge upon which the warrant is founded is bad.—*DEWS v. RILEY* (1851), 11 C. B. 434; 2 L. M. & P. 544; 20 L. J. C. P. 264; 18 L. T. O. S. 155; 16 J. P. 39; 15 Jur. 1159; 138 E. R. 542.

Annotations:—*Consd.* *Aspey v. Jones* (1884), 54 L. J. Q. B. 98. *Refd.* *Mill v. Hawker* (1874), L. R. 9 Exch. 309; *Demer v. Cook* (1903), 88 L. T. 629. *Mentd.* *Mill v. Hawker* (1875), L. R. 10 Exch. 92; *Saunders v. Swansea Finance Co. & Home* (1905), 21 T. L. R. 317.

125. ———.—]—*By stranger*.—*CHUTE v. ALPORT*. No. 115, *ante*.

126. ———.—]—*BRITTON v. COLE*, No. 117, *ante*.

127. ———.—]—*MORSE v. JAMES*, No. 119, *ante*.

128. ———.—]—*By plaintiff*.—*COTES v. MICHILL*, No. 116, *ante*.

129. ———.—]—*MORAVIA v. SLOPER*, No. 118, *ante*.

130. ———.—]—*MORSE v. JAMES*, No. 119, *ante*.

131. ———.—]—In trespass if deft. justify as plff. in a suit in an inferior ct., under mesne process of that ct., he must allege in his plea that the cause of action arose within the jurisdiction. — *EVANS v. MUNKLEY* (1811), 4 Taunt. 48; 128 E. R. 245.

132. What must be alleged—Nature & extent of jurisdiction.]—*MORAVIA v. SLOPER*, No. 118, *ante*.

133. ———.—]—Jurisdiction at commencement of suit below.]—*MORSE v. JAMES*, No. 119, *ante*.

134. ———.—]—When regularity presumed.]—In a plea of justification under process of an inferior ct. erected by letters patent, it is not necessary to make a profert of the letters patent. If it be stated in such a plea that a plaintiff was levied at one ct., & such proceedings thereupon had that a *capias* issued at the next, it will be intended that the proceedings were regular, though no summons

be stated.—*TITLEY v. FOXALL* (1758), Willes, 688; 2 Keny. 308; 125 E. R. 1386.

Annotations:—*Consd.* *Rowland v. Veale* (1774), 1 Cowp. 18. *Refd.* *Dempster v. Purnell* (1841), 3 Man. & G. 375.

See, also, No. 88, *ante*.
See, generally, EXECUTION; PUBLIC AUTHORITIES & PUBLIC OFFICERS; SHERIFFS & BAILIFFS.

SECT. 7. EFFECT OF DECISION IN MATTERS OF LAW AS TO.

See CROWN PRACTICE, pp. 380, 381, *post*.
County courts.]—*See COUNTY COURTS*, Vol. XIII., p. 549, Nos. 1042–1045.

SECT. 8.—EFFECT OF FINDING OF FACT AS TO.

135. Court of limited jurisdiction—General rule.]—A ct. of limited jurisdiction cannot give itself jurisdiction by finding any facts. It has no jurisdiction beyond what the legislature has given it (*LORD WENSLEYDALE*).—*ROOKE v. ERRINGTON* (1859), 7 H. L. Cas. 617; 5 Jur. N. S. 1227; 11 E. R. 246, H. L.

Annotations:—*Refd.* *Jacomb v. Turner*, [1892] 1 Q. B. 47. *Mentd.* *Nawab Sidhee Nuzur Ally Khan v. Ojoodhyaram Khan* (1866), 10 Moo. Ind. App. 540; *Eastwood v. Ashton*, [1915] A. C. 900.

136. ———.—]—*R. v. SHOREDITCH ASSESSMENT COMMITTEE*, *Ex p. MORGAN*, No. 49, *ante*.

Compare No. 231, *post*.
County courts.]—*See COUNTY COURTS*, Vol. XIII., p. 519, Nos. 1046 *et seq.*

See, also, *CROWN PRACTICE*, p. 381, *post*.

SECT. 9.—OUSTER OF.

SUB-SECT. 1.—BY STATUTE.

137. General rule.]—When an offence is created by statute under a penalty, the penalty may be sued for in the superior cts. at Westminster, for the jurisdiction of those cts. is not to be ousted but by express words or necessary implication.

25 Geo. 3, c. 51, having created penalties of £50, & of £10, & having enacted that the former should be sued for in any of the cts. at Westminster, & provided that it should & might be lawful for justices of the peace, etc., to hear &

189; 4 L. Eq. R. 621.—*IR*.

137 vi. ———.—]—Where a peculiar jurisdiction is given by statute, that does not exclude the common law jurisdiction of the ct., unless there be an express exclusion.—*WATERFORD CORPN. v. NEWPORT* (1846), 11 I. L. R. 359.—*IR*.

137 vii. ———.—]—Before the jurisdiction of a superior ct. can be held to be taken away by statute it must appear beyond all doubt that that was the intention of the legislature in enacting the statute.—*AGRIER S.S. CO., LTD. v. COLONIAL SAILING SHIP CO., LTD.* (No. 1.) (1906), 26 N. Z. L. R. 257.—*N.Z.*

137 viii. ———.—]—*Presumption in favour of jurisdiction*.]—Everything is intended in favour of the jurisdiction of a superior ct.—*RITZ v. FROESE* (1898), 12 Man. L. R. 346.—*CAN.*

137 ix. ———.—]—It is a general principle of law that jurisdiction of a superior ct. shall not be taken away except by express words or by necessary implication.—*MUVVULA SERTHAM NAIDU v. DODDI RAMI NAIDU* (1909), I. L. R. 33; Mad. 208.—*IND.*

PART IV. SECT. 8.

135 i. Courts of limited jurisdiction—General rule—Prohibition will not lie.]—*Re JENKINS v. MILLER* (1883), 10 P. R. 95.—*CAN.*

135 ii. ———.—]—Plff. sued in an inferior ct. for the conversion of a mirror, which deft. contended was annexed to the freehold & had passed to him therewith. The judge in the ct. found that the mirror was a chattel, & gave judgment for plff. — *Held*, the judge having found as a fact that the mirror was a chattel, his decision should not be interfered with by way of prohibition.—*Re BUSHELL v. MOSS* (1886), 11 P. R. 251.—*CAN.*

135 iii. ———.—]—Where the judge of an inferior ct. has to decide in the first instance whether the facts proved bring the matter within his jurisdiction, he has jurisdiction to determine that question &, having determined it judicially, his decision cannot be treated as given without jurisdiction.—*DOLL v. HOWARD* (1896), 11 Man. L. R. 21.—*CAN.*

135 iv. ———.—]—*Re SEBERT v. HODGSON* (1900), 32 O. R. 157.—*CAN.*

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135 v. ———.—]—*Except in exceptional circumstances*.]—It is necessary, for the judge of an inferior ct. to inquire into & decide the facts which would determine the question of his jurisdiction &, where he has decided the facts in favour of jurisdiction, the ct. above should not interfere by reviewing his decision, except in very exceptional circumstances.—*LOPPKY v. HOFLEY* (1898), 12 Man. L. R. 335.—*CAN.*

PART IV. SECT. 9, SUB-SECT. 1.

137 i. General rule.]—*GRIEVE v. WOODRUFF* (1877), 1 A. R. 617.—*CAN.*

137 ii. ———.—]—*R. v. BUNTING* (1885), 7 O. R. 524.—*CAN.*

137 iii. ———.—]—*DUNN v. R.* (1894), 4 Exch. C. R. 68.—*CAN.*

137 iv. ———.—]—The jurisdiction of a superior ct. cannot be ousted except by legislative enactment.—*KELLY v. ALASKA MINING & TRADING CO.* (1899), 4 Terr. L. R. 18.—*CAN.*

137 v. ———.—]—*BYRNE v. BYRNE* (1842), 2 Dr. & War. 71; 1 Con. & Law

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determine the latter, with a power to them to mitigate the penalties, etc.:—*Held*: such proviso ousted the jurisdiction of the superior cts., as to the £10 penalties.—*CATES v. KNIGHT* (1789), 3 Term Rep. 442; 100 E. R. 667.

Annotations:—*Consd.* *Crisp v. Bunbury* (1832), 8 Bing. 394; *Re Dilworth, Ex p. Benson* (1832), 1 L. J. Bey. 37; *Re Joiner, Ex p. Elsee* (1832), 1 L. J. Bey. 38; *Ex p. Lancaster Canal Co.* (1832), 1 L. J. Bey. 37. *Reffd.* *Shipman v. Henbest* (1790), 4 Term Rep. 109; *Stanley v. Wharton* (1821), 9 Price, 301; *Shaftesbury v. Russell* (1823), 3 Dow. & Ry. K. B. 84; *L. & B. Ry. v. Watson* (1879), 4 C. P. D. 118.

138. —.]—The jurisdiction [of the Ct. of Ch.] cannot, in my judgment, be taken away but by express words, or by words creating a necessary implication to that effect (LORD ELDON).—*A.-G. v. DUBLIN CORPN.* (1827), 1 Bli. N. S. 312; 4 E. R. 888, H. L.

Annotations:—*Mentd.* *Ludlow Corpn. v. Greenhouse* (1827), 1 Bli. N. S. 17; *A.-G. v. Carlisle Corpn.* (1828), 2 Sim. 437; *A.-G. v. Liverpool Corpn.*, *A.-G. v. Aspinall* (1837), 7 L. J. Ch. 51; *A.-G. v. East Retford Corpn.* (1838), 3 My. & Cr. 484; *Armitstead v. Durham* (1848), 11 Beav. 556; *Nightingale v. Goulbourn* (1848), 2 Ph. 594; *A.-G. v. Eastlake* (1853), 11 Hare, 205; *Drogheda Corpn. v. Holmes* (1855), 5 H. L. Cas. 460; *Beaumont v. Oliveira* (1869), 4 Ch. App. 309; *Goodman v. Saltash Corpn.* (1882), 7 App. Cas. 633; *Re St. Botolph without Bishopsgate Parish Estates* (1887), 35 Ch. D. 142; *Re Christchurch Inclosure Act* (1888), 38 Ch. D. 520.

139. —.]—*R. v. LONDON CORPN.*, No. 29, *ante*.

140. —.]—It has always been held that there must be clear & express words in an Act of Parliament to take away the jurisdiction of the superior cts. (COLERIDGE, J.).—*GRAY v. SOANES* (1838), 1 Will. Woll. & H. 317; 2 Jur. 1040.

141. —.]—Where the Legislature intends that the jurisdiction of a ct. shall be taken away, it must provide for such extinction of jurisdiction in express & definite terms.—*CLEMENTS v. BOWES* (1852), 17 Sim. 167; 21 L. J. Ch. 306; 18 L. T. O. S. 220; 16 Jur. 96; 60 E. R. 1092.

Annotation:—*Mentd.* *Ward v. Sittingbourne & Sheerness Ry.* (1874), 9 Ch. App. 490, n.

142. —.]—There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, & that liability is affirmed by a statute which gives a special & peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, *viz.* where a liability not existing at common law is created by a statute which at the same time gives a special & particular remedy for enforcing it (WILLES, J.).—*WOLVERHAMPTON NEW WATERWORKS CO. v. HAWKESFORD* (1859), 6 C. B. N. S. 336; 28 L. J. C. P. 242; 33 L. T. O. S. 366; 5 Jur. N. S. 1104; 7 W. R. 464; 141 E. R. 486.

Annotations:—*Consd.* *Stevens v. Chown, Stevens v. Clark,*

o. Special Act—Mining statute, 1865.—The fact that above Act has provided a special remedy for any interference with possession of land under a miner's right, does not oust jurisdiction of an inferior ct. to entertain an action of trespass in respect of such interference.—*R. v. DUNNE, Ex p. BAILLIE* (1872), 3 V. R. (Law), 239.—*AUS.*

p. — Patent Act, 1872, s. 28.—The jurisdiction, in respect of the avoidance of patents, conferred upon

the Minister of Agriculture by above sect. is exclusive of that possessed by any other tribunal in the Dominion.—*TORONTO TELEPHONE MANUFACTURING CO. v. BELL TELEPHONE CO.* (1885), 2 Exch. C. R. 524.—*CAN.*

q. — Exchequer Court Act—Validity of trade mark.—Amendments to the Exchequer Ct. Act have not had the effect of giving that ct. exclusive jurisdiction to adjudicate as to the validity of a registered trade-mark.—*PROVIDENT CHEMICAL WORKS v.*

[1901] 1 Ch. 894; *A.-G. v. Ashborne Recreation Ground Co.*, [1903] 1 Ch. 101; *Neville v. London "Express" Newspaper*, [1919] A. C. 368. *Reffd.* *Vallance v. Falle* (1884), 53 L. J. Q. B. 459; *Abergavenny Improvement Comrs. v. Straker* (1889), 42 Ch. D. 83; *Woolley & Woolley v. Broad* (1892), 66 L. T. 680; *Devonport Corpn. v. Tozer* (1903), 67 J. P. 269; *Whittaker v. L. C. C.*, [1915] 2 K. B. 678; *Re Aramayo Francke Mines*, [1921] 1 Ch. 875. *Mentd.* *Re Electric Telegraph Co. of Ireland, Bunn's Case* (1860), 2 De G. F. & J. 275; *Re Little Down & Ebber Rooks Mineral & Mining Co., Olerenshaw's Case* (1860), 2 L. T. 522; *Burke v. Lochmure* (1871), L. R. 6 Q. B. 297; *Portal v. Emmens* (1876), 1 C. P. D. 201; *Aramayo Francke Mines v. Public Trustee*, [1922] 2 A. C. 406.

143. —.]—The jurisdiction of the Ct. of Ch. is not ousted by a limited statutory jurisdiction conferred upon another ct., & is properly invoked where the purposes for which the limited jurisdiction is conferred are at an end, or where the limited jurisdiction is not equal to the comprehension of the matter in dispute or can only be exercised on terms destructive of the right claimed.—*TROUP v. RICARDO* (1864), 4 De G. J. & Sm. 489; 5 New Rep. 62; 34 L. J. Ch. 91; 11 L. T. 399; 10 Jur. N. S. 1161; 13 W. R. 147; 46 E. R. 1008, L. C.

Annotations:—*Reffd.* *Smith v. Moffatt* (1865), L. R. 1 Eq. 397; *Motion v. Moojen* (1872), L. R. 14 Eq. 202. *Mentd.* *Roberts v. Moreton* (1869), 17 W. R. 397; *Payne v. Dieker* (1871), 24 L. T. 492; *Turner v. L. & S. W. Ry.*, & *Ringwood, Christchurch & Bournemouth Ry.* (1874), 43 L. J. Ch. 430; *Bird v. Philpott*, [1900] 1 Ch. 822. *See, further, STATUTES.*

144. *Special Act—Construction of.*—To a declaration under 1 Vict. c. xcvi., s. 75, in an action for calls brought in England, *deft.* pleaded that the ct. ought not to take further cognisance of the action, because it is enacted by the statute that in an action for calls, it should be lawful for the co. to sue for & recover the same in any of Her Majesty's cts. of record in Dublin, & that he was therefore liable to be sued in those cts. & not elsewhere. On demurrer to this plea:—*Held*: (1) although in form a plea to the jurisdiction, yet as it disclosed matters in bar of the action, it might be made use of for that purpose, & therefore the declaration was open to the objection of being bad at common law; (2) *plffs.*, not having followed the remedy given by the Act, could not avail themselves of the concise form of declaring given by that Act.—*DUNDALK WESTERN RY. CO. v. TAPSTER* (1841), 1 Q. B. 667; 2 Ry. & Can. Cas. 586; 1 Gal. & Dav. 657; 10 L. J. Q. B. 186; 5 Jur. 699; 113 E. R. 1287.

Annotations:—*As to (2) Reffd.* *Cleeve v. Harwar, Wilde v. Stanner* (1857), 1 H. & N. 873; *St. Pancras Vestry v. Batterbury* (1857), 2 C. B. N. S. 477. *Generally Mentd.* *Bank of Australasia v. Nias* (1851), 20 L. J. Q. B. 284; *Sheehy v. Professional Life-Assurance* (1857), 2 C. B. N. S. 211.

145. —.]—*Manchester Ship Canal Act, 1885, c. clxxxviii., s. 88*, enacted that certain provisions for the protection of the *corpn.* of W. & traders unless otherwise agreed on by the *corpn.* & the Ship Canal Co. should have effect, & subsect. 22, that any difference arising between the co. & the *corpn.* as to the meaning of the sect. or anything to be done or not to be done thereunder should be determined by an engineer to be appointed, unless otherwise agreed on, by the Board of Trade, whose decision should be final

CANADA CHEMICAL MANUFACTURING CO. (1902), 4 O. L. R. 545; 22 C. L. T. 381; 1 O. W. R. 618.—*CAN.*

r. Effect of.—Where jurisdiction has been taken away by statute, the *maxim actus curie neminem gravabit* cannot be applied after expiration of times prescribed, so as to validate an order either by antedating it or entering it *nunc pro tunc*.—*DOMINION COTTON MILLS CO. v. TRECOBIC MARSH COMRS.* (1906), 37 S. C. R. 79; 26 C. L. T. 185.—*CAN.*

and binding on both parties. By sect. 202, any question arising between the co. & any person touching anything to be done or not to be done or any money to be paid under the provisions of the Act should be determined by arb'n. in manner provided by Railways Clauses Consolidation Act, 1845 (c. 20). An action having been brought by the corp'n. & traders against the co. to enforce the statutory obligations. Upon a preliminary objection as to competency:—*Held*: (1) as to the corp'n. the action must be dismissed, the jurisdiction of the ct. being ousted by the special provisions (2) the traders were entitled to proceed with the action & have the merits of their case determined.—*CROSFIELD & SONS, LTD. v. MANCHESTER SHIP CANAL CO.*, [1905] A. C. 421; 74 L. J. Ch. 637; 93 L. T. 141; 69 J. P. 441; 54 W. R. 172; 21 T. L. R. 689, H. L.

Annotations:—As to (1) *Consol. Norwich Corp'n. v. Norwich Electric Tram. Co.*, [1906] 2 K. B. 119. *Refd. A.-G. v. N. E. Ry.*, [1915] 1 Ch. 905. *Generally, Refd. Audenshaw U. D. C. v. Manchester Corp'n.* (1907), 71 J. P. 342. *Mentd. Corbett v. S. E. & C. Railways' Managing Committee*, [1906] 2 Ch. 12.

146. Effect of.—On powers of court.—By Sea Fisheries Act, 1843 (c. 79), the Articles of a certain convention between Her Majesty & the King of the French, concerning the fisheries in the seas between the British Islands & France, are declared to have the force of law. By these Articles all transgressions of the regs. are in both countries to be submitted to the exclusive jurisdiction of the tribunal or magistrates designated by law, who are to settle differences & decide all contentions between fishermen of the two countries; & the trial & judgment are always to take place in a summary manner. This tribunal is also to have power to award damages for injuries over & above the penalties. By sect. 11 of the Act all offences against the Articles committed by British subjects are to be determined by justices of the peace, who are also declared to have the power of awarding compensation for injuries:—*Held*: no action could be maintained for an injury caused by the breach of any of the regulations, as exclusive jurisdiction in such matters was given to the tribunal specified in the Act.—*MARSHALL v. NICHOLLS* (1852), 18 Q. B. 882; 21 L. J. Q. B. 343; 19 L. T. O. S. 284; 16 J. P. 519; 16 Jur. 1155; 118 E. R. 333.

Annotations:—*Refd. Cleeve v. Harwar, Wilde v. Stanner* (1857), 1 H. & N. 873; *Clegg Parkinson v. Earby Gas Co.*, [1896] 1 Q. B. 592; *Peebles v. Oswaldtwistle Urban District*, [1897] 1 Q. B. 625.

147. ————]—Where a statute gives a right to recover expenses in a ct. of summary jurisdiction from a person who is not otherwise liable, there is no right to come to the High Ct. for a declaration that appct. has a right to recover the expenses, in a ct. of summary jurisdiction; he can only take proceedings in the latter ct.

It would be very mischievous to hold that when a party is compelled by statute to resort to an inferior ct. he can come first to the High Ct. to have his right to recover—the very matter relegated to the inferior ct.—determined. Such a proposition is unsound in principle (*LORD HERSCHELL*).

The ct. cannot make a declaration on a subject as to which its jurisdiction to give relief is excluded by statute (*LORD DAVEY*).—*BARRACLOUGH v. BROWN*, [1897] A. C. 615; 66 L. J. Q. B. 672; 76 L. T. 797; 62 J. P. 275; 13 T. L. R. 527; 8 Asp. M. L. C. 290; 2 Com. Cas. 249, H. L.; *affg.* (1896), 65 L. J. Q. B. 333, O. A.

Annotations:—*Consol. Devonport Corp'n. v. Tozer* (1903), 67 J. P. 269. *Refd. A.-G. v. Merthyr Tydfil Union*, [1900] 1 Ch. 516; *R. v. Philbrick, Ex p. Edwards* (1905), 53 W. R. 527; *De Gasquet James v. Mecklenburg Schwerin*,

[1914] P. 53; *Guaranty Trust Co. of New York v. Hannay*, [1915] 2 K. B. 536; *Barwick v. S. E. & C. Rys.*, [1920] 2 K. B. 387. *Mentd. Smith v. Wilson*, [1896] A. C. 579; *The Veritas*, [1901] P. 304; *Lucy v. Dorling* (1905), 49 So. Jo. 582; *The Wallend*, [1907] P. 302.

148. ————]—**Corn Production Act, 1917 (c. 46).**—The above Act, which provides that an employer who fails to pay a workman in agriculture the minimum wage fixed by the Act shall be liable on summary conviction to a pecuniary penalty, does not exclude the jurisdiction of the High Ct. to entertain a claim for arrears of wages based on the difference between the amount paid & the minimum rate fixed under the Act.—*WAGHORN v. COLLISON* (1922), 91 L. J. K. B. 735; 127 L. T. 8; 86 J. P. 94; 38 T. L. R. 352; 66 Sol. Jo. 504; 20 L. G. R. 351, C. A.

———]—*See ARBITRATION*, Vol. II., pp. 354, 355, Nos. 288, 289.

As ground for certiorari to quash proceedings.—*See CROWN PRACTICE*, pp. 424 *et seq.*, *post*.

Ouster of jurisdiction of superior court—Agricultural holdings.—*See AGRICULTURE*, Vol. II., p. 46, Nos. 251, 252.

———]—**Building societies.**—*See BUILDING SOCIETIES*, Vol. VII., pp. 493 *et seq.*

———]—**Compulsory purchase of land.**—*See COMPULSORY PURCHASE OF LAND & COMPENSATION*, Vol. XI., pp. 136 *et seq.*, 187 *et seq.*

———]—**Electric lighting.**—*See ELECTRIC LIGHTING & POWER.*

———]—**Factories & workshops.**—*See FACTORIES & SHOPS.*

———]—**Friendly societies.**—*See FRIENDLY SOCIETIES.*

———]—**Gasworks.**—*See GAS.*

———]—**Housing of working classes.**—*See COMPULSORY PURCHASE OF LAND & COMPENSATION*, Vol. XI., pp. 293 *et seq.*; *PUBLIC HEALTH & LOCAL ADMINISTRATION.*

———]—**Industrial disputes.**—*See TRADE & TRADE UNIONS.*

———]—**Lunatic asylums.**—*See LUNATICS & PERSONS OF UNSOUND MIND; PUBLIC HEALTH & LOCAL ADMINISTRATION.*

———]—**National health insurance.**—*See WORK & LABOUR.*

———]—**Public health.**—*See PUBLIC HEALTH & LOCAL ADMINISTRATION.*

———]—**Railways.**—*See CARRIERS*, Vol. VIII., pp. 205, 206; *RAILWAYS & CANALS.*

———]—**Savings banks.**—*See BANKERS & BANKING*, Vol. III., p. 135, Nos. 98–100.

———]—**Statutory determination of minimum rates of wages.**—*See WORK & LABOUR.*

———]—**Telegraphs & telephones.**—*See TELEGRAPHS & TELEPHONES.*

———]—**Tramways.**—*See TRAMWAYS & LIGHT RAILWAYS.*

———]—**Waterworks.**—*See COMPULSORY PURCHASE OF LAND & COMPENSATION*, Vol. XI., pp. 290 *et seq.*; *WATER SUPPLY.*

———]—**Workmen's compensation.**—*See MASTER & SERVANT.*

SUB-SECT. 2.—BY AGREEMENT.

149. General rule.—It is a principle of law, that parties cannot by contract oust the cts. of their jurisdiction; but any person may covenant that no right of action shall accrue till a third person has decided on any difference that may arise between himself & the other party to the covenant.

A. effected in a mutual insurance co. a policy of insurance on a ship, one of the conditions of which was, that the sum to be paid to any insurer

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for loss should in the first instance be ascertained by the committee; but if a difference should arise between the insurer & the committee relative to the settling of any loss, or to a claim for average, or any other matter relating to the insurance, the difference was to be referred to arbitration, in a way pointed out in the conditions: provided that no insurer who refused to accept the amount settled by the committee should be entitled to maintain any action at law or suit in equity on his policy, until the matter had been decided by the arbitrators, & then only for such sum as the arbitrators should award, & the obtaining the decision of the arbitrators was declared a condition precedent to the maintaining of an action:—*Held*: these conditions were lawful, & even should the difference relate to other matters than those of mere amount, till award made no action was maintainable.—*SCOTT v. AVERY* (1856), 5 H. L. Cas. 811; 25 L. J. Ex. 308; 28 L. T. O. S. 207; 2 Jur. N. S. 815; 4 W. R. 716; 10 E. R. 1121, H. L.; *reusq.* S. C. *sub nom.* *AVERY v. SCOTT* (1853), 8 Exch. 497, Ex. Ch.

Annotations.—*Consd.* *Horton v. Sayer* (1859), 4 H. & N. 643; *Braunstein v. Accidental Death Insce. Co.* (1861), 1 B. & S. 782; *Elliott v. Royal Exchange Assee. Co.* (1867), L. R. 2 Exch. 237; *Atlantic Shipping & Trading Co. v. Louis Dreyfus*, [1922] 2 A. C. 250; *Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478. *Refd.* *Russell v. Pollegrind* (1856), 6 E. & B. 1020; *Lee v. Page* (1861), 30 L. J. Ch. 857; *Turnbull v. Woolfe* (1861), 4 L. T. 236; *Tredwen v. Holman* (1862), 1 H. & C. 72; *Wright v. Deley* (1866), 4 H. & C. 209; *Cooke v. Cooke* (1867), L. R. 4 Eq. 77; *Dawson v. Fitzgerald* (1876), 1 Ex. D. 257; *Fidwards v. Aberavon Mutual Ship Insce. Soc.* (1876), 1 Q. B. D. 563; *Collins v. Locke* (1879), 4 App. Cas. 674; *Mulkern v. Lord* (1879), 48 L. J. Ch. 745; *Babbage v. Coullourn* (1882), 52 L. J. Q. B. 50; *Trainor v. Phoenix Fire Assee. Co.* (1891), 65 L. T. 825; *Scott v. Mercantile Accident & Guarantee Insce. Co.* (1892), 66 L. T. 811; *Spurrier v. La Cloche*, [1902] A. C. 446; *Pena Copper Mines v. Rio Tinto Co.* (1911), 105 L. T. 846; *Jureidini v. National British & Irish Millers Insce. Co.* (1914), 84 L. J. K. B. 640; *Toronto Ry. v. National British & Irish Millers Insce. Co.* (1914), 111 L. T. 555; *Lock v. Army Navy & General Assee. Assocn.* (1915), 31 T. L. R. 297; *Ertel Bieher v. Rio Tinto Co., Dynamit Act. v. Same, Vereinigte Konigs & Laurahütte Act. v. Same*, [1918] A. C. 260; *Woodall v. Pearl Assee. Co.*, [1919] 1 K. B. 593. *Mentd.* *Livingston v. Ralli* (1855), 24 L. J. Q. B. 269; *Northampton Gas Light Co. v. Parnell* (1855), 15 C. B. 630; *Scott v. Liverpool Corp'n.* (1858), 3 De G. & J. 334; *Roper v. London* (1859), 1 E. & E. 825; *Coker v. Young* (1860), 2 F. & F. 98; *Stokoe v. Hall* (1864), 3 New Rep. 566; *Darney v. L. C. & D. Ry.* (1865), 13 W. R. 824; *Hill v. South Staffordshire Ry.* (1865), 12 L. T. 63; *Pestonjee Nussurwanjee v. Manockjee* (1868), 12 Moo. Ind. App. 112; *Gray v. Pearson* (1870), 23 L. T. 416; *Wright v. Ward* (1871), 24 L. T. 439; *Hart v. Hart* (1881), 18 Ch. D. 670; *Minifie v. Railway Passengers Assee. Co.* (1881), 44 L. T. 552; *Spackman v. Plumstead Board of Works* (1885), 10 App. Cas. 229; *Met. Dist. Ry. v. Met. Ry.* (1886), 5 Ry. & Can. Tr. Cas. 126; *Caledonian Insce. Co. v. Gilmour*, [1893] A. C. 85; *Parry v. Liverpool Malt Co.*, [1900] 1 Q. B. 339.

150. — Effect of arbitration agreement.]—A ship was chartered for a voyage from R. to H. with a full cargo of linseed. The charterparty provided for the reference of all disputes under the contract to the final arbitrament of two arbitrators, one to be appointed by each of the parties, with power to appoint an umpire, and the clause continued: "any claim must be made in writing & claimants' arbitrator appointed within three months of final discharge & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." After the arrival of the ship at H. the charterers brought an action against the ship-owners in respect of damage alleged to have been occasioned to a part of the linseed during the voyage by reason of the unseaworthiness of the ship at the commencement of the voyage. The ship-owners pleaded that the

charterers failed to appoint their arbitrator within three months of the discharge of the ship & by reason of such failure the action was not maintainable, & by order of the ct., the question whether the claim in the action was barred by the arbitration clause was tried as a preliminary question of law:—*Held*: (1) the arbitration clause was not open to objection on the ground that it ousted the jurisdiction of the ct.; (2) inasmuch as the claim in the action was founded upon a breach of the implied condition of seaworthiness, there being in the charterparty no express provision relating to unseaworthiness, the ship-owners were not entitled to the benefit of the term in the clause restricting the time within which the action could be brought, & consequently the claim was not barred by the arbitration clause.—*ATLANTIC SHIPPING & TRADING CO. v. DREYFUS (LOUIS) & Co.*, [1922] 2 A. C. 250; 91 L. J. K. B. 513; 127 L. T. 411; 38 T. L. R. 534; 66 Sol. Jo. 437; 27 Com. Cas. 311, H. L.

Annotation.—*Is to* (1) *Consd.* *Czarnikow v. Roth, Schmidt*, [1922] 2 K. B. 478.

151. — Prohibiting application for special case.]—A contract for the sale of sugar provided that the contract was subject to the rules of the Refined Sugar Assocn. The rules required that all members of the assocn. making contracts subject to those rules should refer any disputes arising out of such contracts, including any questions of law, to the arbn. of the council of the assocn.; & by rule 19 neither buyer, seller, trustee in bkpcy., nor any other person as aforesaid should require, nor should they apply to the ct. to require any arbitrators to state in the form of a special case for the opinion of the ct. any question of law arising in the reference, but such question of law should be determined in the arbitration in manner therein directed. A dispute between the buyers & sellers was referred to the arbitration of the council. The buyers requested the arbitrators either to state their award in the form of a special case under Arbitration Act, 1889 (c. 49), s. 7, or alternatively to state a case for the opinion of the ct. under sect. 19 upon certain points of law arising in the reference, or to give them an opportunity of applying to the ct. for an order directing them to state a case. The arbitrators thinking themselves precluded by rule 19, refused to comply with that request, & made their award without giving the buyers an opportunity of applying to the ct. for an order. The buyers moved to set aside the award on the ground of misconduct of the arbitrators in so refusing:—*Held*: rule 19 & the agreement embodying it were contrary to public policy & invalid, as involving an ouster of the statutory jurisdiction of the cts. under the above Act, & that the award must be set aside.—*CZARNIKOW v. ROTH, SCHMIDT & Co.*, [1922] 2 K. B. 478; 92 L. J. K. B. 81; 127 L. T. 824; 38 T. L. R. 797; 28 Com. Cas. 29, C. A.

152. Effect of agreement to be bound by decision of third party.]—Complainant became conductor of a tramway co. under an agreement by which he was to pay them £5 to be retained, together with his wages for the current week, as security for the discharge of his duties & the observance of the rules of the co., etc., the co. to have power, in case of any breach by the conductor of the rules, to retain the £5 & his wages for the current week as liquidated damages for such breach, & it was provided that the manager of the co. should be the sole judge between the co. & the conductor whether the co. was entitled to retain the whole or any part of the £5 & wages for the current week as liquidated damages; & that his certificate

should be binding & conclusive evidence in all cts. of justice, civil, & criminal & before all stipendiary & police magistrates, etc., that the amount thereby certified as the amount to be retained was the true amount to be retained, & should bar the conductor of all right to recover it. Complainant having summoned the co. before a police magistrate to recover his deposit & wages:—*Held*: the agreement was not illegal & the complaint being substantially a civil proceeding, the manager's certificate that the deposit & wages had been forfeited was conclusive evidence of the fact, precluding the magistrate from making any further inquiry.—*LONDON TRAMWAYS CO. v. BAILEY* (1877), 3 Q. B. D. 217; 47 L. J. M. C. 3; 37 L. T. 499; 42 J. P. 22; 26 W. R. 494, D. C. *Annotation*:—*Reid*. *Armstrong v. South London Tram Co.* (1890), 64 L. T. 96.

Effect of agreement to refer to arbitration.]—See *ARBITRATION*, Vol. II., pp. 349, 350, Nos. 255, 263 *et seq.*

Effect of agreement not to appeal.]—See Nos. 338, 927–930, *post*.

SECT. 10.—EFFECT OF CONSENT OR WAIVER OF OBJECTION TO.

SUB-SECT. 1.—WHERE NO JURISDICTION.

A. In General.

153. General rule.]—The jurisdiction of an inferior ct. cannot be enlarged by the agreement of the parties.—*HILL v. BIRD* (1648), Sty. 102; 82 E. R. 563.

154. —.]—(1) The party to a suit in an inferior ct. cannot justify under a recovery there & process of execution, if the cause of action in fact arose out of its jurisdiction, although deft. below appeared & pleaded to the merits. The admission of the party cannot give jurisdiction to an inferior ct., nor estop him from afterwards denying it.

(2) The officer of the ct. may justify if the declaration below alleged a cause of action arising within its jurisdiction, otherwise not.—*HIGGINSON v. MARTIN & HADLEY* (1877), 1 Freem. K. B. 322; 2 Mod. Rep. 195; 89 E. R. 239.

Annotations:—*As to* (1) *Consol. Moravia v. Sloper* (1737), Willes, 30; *Rowland v. Veale* (1774), 1 Cowp. 18. *Reid*. *Herbert v. Cook* (1782), 3 Doug. K. B. 101; *Ricketts v. Bodenham* (1836), 4 Ad. & El. 433.

155. —.]—Original jurisdiction as to bounds of proprietary governments is in the King in Council but by the contract of the parties is brought

within the jurisdiction. “To be sure a plea to the jurisdiction must be offered in the first instance & put in *primo die*; & answering submits to the jurisdiction; much more where there is a proceeding to hearing on the merits which would be conclusive at common law. Yet a ct. of equity, which can exercise a more liberal discretion than common law cts., if a plain defect of jurisdiction appears at the hearing, will no more make a decree than where a plain want of equity appears” (LORD HARDWICKE, C.).—*PENN v. BALTIMORE* (LORD) (1750), 1 Ves. Sen. 444; 27 E. R. 1132, L. C.

Annotations:—*Reid*. *Pike v. Hoare* (1763), Amb. 428; *Portarlington v. Souby* (1834), 3 My. & K. 104; *Re Holmes* (1861), 2 John. & H. 527; *Cookney v. Anderson* (1862), 31 Beav. 452; *Sichel v. Raphael* (1864), 3 New Rep. 662; *Companhia de Mocambique v. British South Africa Co.*, *De Sousa v. British South Africa Co.*, [1892] 2 Q. B. 358; *Black Point Syndicate v. Eastern Concessions* (1898), 79 L. T. 658; *British South Africa Co. v. De Beers Consolidated Mines*, [1910] 1 Ch. 354; *British Controlled Oilfields v. Stagg* (1921), 127 L. T. 209. *Mentd*. *Bayley v. Edwards* (1792), 3 Swan 703; *Bedreeshund v. Elphinstone* (1831), 2 State Tr. N. S. 379; *Houlditch v. Donegal* (1834), 8 Bil. N. S. 301; *Re Courtney*, *Ex p.* *Pollard* (1838), 4 Deac. 27; *Norris v. Chambers* (1861), 29 Beav. 246; *Douglas v. Douglas*, *Douglas v. Webster* (1871), L. R. 12 Eq. 617; *Ewing v. Orr Ewing* (1883), 9 App. Cas. 34; *I. It. Comrs. v. Angus*, *I. R. Comrs. v. Lewis* (1889), 23 Q. B. D. 579; *Mercantile Investment & General Trust Co. v. River Plate Trust Loan & Agency Co.* (1892), 61 L. J. Ch. 473; *Duder v. Amsterdam Trust Co.* (1907) 2 K. B. 885.

156. —.]—In the case of a devise of a rectory to a college in trust, *inter alia*, to present the senior divine then fellow a plea to the jurisdiction, as being in the visitor, was overruled.

In case of a private, particular, limited jurisdiction, & of cts. proceeding by rules different from the general law of the land, no appearance, answering or pleading of the party, will give a jurisdiction to the ct.; but if there is a want of jurisdiction in the cause, it may be called in question at any time, even after sentence (LORD HARDWICKE, C.).—*GREEN v. RUTHERFORTH* (1750), 1 Ves. Sen. 462; 27 E. R. 1144, L. C.

Annotations:—*Reid*. *A.-G. v. St. Cross Hospital* (1853), 17 Beav. 435. *Mentd*. *R. v. Ely Bp.* (1757), 1 Wm. Bl. 71; *R. v. Windham* (1776), 1 Cowp. 377; *Whiston v. Rochester* (1849), 7 Hare, 532.

157. —.]—If it appears on the record that the inferior ct. had never any jurisdiction on the subject, there is no proceeding in this ct. & no acquiescence of parties ever can maintain the judgment. I state without exception, as a general principle, that in cts. of equity as well as cts. of law, a party admitting a fact which does give jurisdiction to a ct., admitting it, & appearing

PART IV. SECT. 10, SUB-SECT. 1.—A.

153 i. General rule.—Consent of parties cannot give jurisdiction.]—Consent does not operate to create jurisdiction.—*MASON v. HAN* (1884), 10 V. L. R. 335.—*AUS.*

153 ii. —.]—*Re WILSON & COUNTY OF ELGIN* (1894), 16 P. R. 150.—*CAN.*

153 iii. —.]—*Re MITCHELL & PIONEER STEAM NAVIGATION CO.* (1900), 31 O. R. 542; 20 C. L. T. 74.—*CAN.*

153 iv. —.]—Where a ct. or judge is not vested with jurisdiction by law, the consent of the parties cannot confer jurisdiction.—*Ex p. TREMBLAY* (1902), Q. R. 11 K. B. 454.—*CAN.*

153 v. —.]—*CANADIAN PACIFIC RY. CO. v. SPRINGDALE SCHOOL DISTRICT* (1904), 35 S. C. R. 550.—*CAN.*

153 vi. —.]—It is not competent to the parties to a contract to agree to confer jurisdiction upon a ct. of any judicial division other than the one in which under statute any action

arising out of a breach of the contract may be brought, & if such action is brought in any other ct., the judge should refuse to try it on the ground of want of jurisdiction.—*MANITOBA WINDMILL CO. v. VIGIER* (1909), 18 Man. L. R. 427; 10 W. L. R. 350.—*CAN.*

153 vii. —.]—*R. v. GRAVES* (No. 2) (1912), 12 E. L. R. 49.—*CAN.*

153 viii. —.]—*AUKHILCHUNDER SEN ROY v. MOHINY MOHUN DASS* (1879), 1 L. R. 5 Calc. 489; 4 C. L. R. 491.—*IND.*

153 ix. —.]—When the judge has no jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent convert it into a proper judicial process.—*MINAKSHI NAIDU v. SUBRAMANYA SASTRI* (1887), 1 L. R. 11 Mad. 26; L. T. 14 Ind. App. 160.—*IND.*

153 x. —.]—*AKLEMANESSA BINI v. MAHOMED HATEM* (1904), 1 L. R. 31 Calc. 849.—*IND.*

153 xi. —.]—In cases where the ct. has not jurisdiction, the consent of the parties does not confer any

authority to try or hear, & decide thereupon.—*DONOHUE v. QUINN* (1839), 1 Craw. & D. 369.—*IR.*

153 xii. —.]—The objection of want of jurisdiction is a substantial & not a formal objection & cannot be waived.—*ORR v. CAHILL* (1840), 1 Craw. & D. 556.—*IR.*

153 xiii. —.]—When a suit has been tried by a ct. having no jurisdiction over the matter, the parties cannot, by their mutual consent, convert the proceedings into a judicial process; although, when the merits have been submitted to a ct., it may result that, having themselves constituted it their arbiter, the parties may be bound by its decision.—*LEDGARD v. BULL* (1886), 1 L. R. 9 All. 191; L. R. 13 Ind. App. 134.—*IND.*

153 xiv. —.]—*Distinction between inferior & superior courts.]—*Consent or acquiescence does not give jurisdiction to a ct. of limited jurisdiction, though the waiver may be sufficient in a ct. of superior jurisdiction.—*BABAJI v. LAKSHMIBAI* (1884), 1 L. R. 9 Bom. 266.—*IND.*

Sect. 10—Effect of consent or waiver of objection to: Sub-sect. 1, A. & B.]

& submitting to that jurisdiction upon general principles, & upon all analogies known to us, can never recede, or as it is called in the Scottish law, refile, from those facts & withdraw that admission (LEACH, V.-C.).—**DONEGAL v. DONEGAL** (1821), 3 Phillim. 597; 161 E. R. 1426; *sub nom.* **CHICHESTER v. DONEGAL**, 6 Madd. 375; *subsequent proceedings* (1822), 1 Add. 5.

Annotation:—Consd. Parkes v. Parkes (1852), 2 Rob. Ecol. 518.

158. —[—]How can we decide that mere consent of parties shall give a jurisdiction which is withheld by Act of Parliament. The safe course will certainly be to hold that consent cannot have any such effect (LORD DENMAN, C.J.).—**R. v. CUMBERLAND JJ.** (1835), 1 Har. & W. 497; 5 Nev. & M. K. B. 578; 3 Nev. & M. M. C. 451; 5 L. J. M. C. 11.

159. —[—]—**RETEMeyer v. OBERMULLER**, No. 389, *post*.

160. —[—]—A declaration in *assumpsit* stated that, in consideration that deft. was tenant of a farm to pltf., he promised to spend on the farm all the hay which should arise during the tenancy; breach, that a certain quantity of hay arose, but deft. spent it elsewhere. The pleas were *non assumpsit*, & that the hay was not spent elsewhere. The writ of summons was indorsed for £8 8s. 4d. debt:—**Held**: this was not triable before the sheriff, under Civil Procedure Act, 1833 (c. 42), s. 17, & a verdict having been recovered before the sheriff for £3 14s. 2d., the ct. would set aside the writ of trial & subsequent proceedings, though it was suggested that deft. had assented to the trial being had before the sheriff, & the ct., for that reason, would give no costs.—**LAWRENCE v. WILCOCK** (1840), 11 Ad. & El. 941; 8 Dowl. 681; 3 Per. & Dav. 536; 9 L. J. Q. B. 284; 4 Jur. 651; 113 E. R. 672.

Annotations:—Distd. R. v. Clarke (1844), 6 Q. B. 349. **Refd. Lismore v. Beadle** (1842), 11 L. J. Q. B. 153. **Mentd. R. v. Buckinghamshire JJ.** (1849), 18 L. J. M. C. 113.

161. —[—]—A total want of jurisdiction cannot be cured by the assent of the parties.—**JONES v. OWEN** (1848), 5 Dow. & L. 689; 2 Saund. & C. 348; 1 Cox, M. & H. 176; 18 L. J. Q. B. 8; 12 L. T. O. S. 153; 13 Jur. 261.

Annotations:—Refd. Farquharson v. Morgan, [1894] 1 Q. B. 652; **Alderton v. Palsner** (No. 1) (1901), 45 Sol. Jo. 722. **Mentd. R. v. Cambridgeshire JJ.** (1850), 14 J. P. Jo. 781; **Banks v. Robbeck** (1851), 17 L. T. O. S. 170; **Kerkin v. Kerkin** (1854), 3 E. & B. 399; **Marsden v. Wardle** (1854), 3 E. & B. 695; **Denton v. Marshall** (1863), 1 H. & C. 654.

162. —[—]—No agreement of counsel to abstain from making the objection can alter the law of the land, which says that an inferior ct. can only hold plea where the cause of action arises within the local limits to which its jurisdiction by charter or custom is confined (LORD CAMPBELL, C.J.).—**WADSWORTH v. SPAIN (QUEEN)**, **DE HABER v. PORTUGAL (QUEEN)** (1851), 17 Q. B. 171; 8 State Tr. N. S. 53; 20 L. J. Q. B. 488; 16 Jur. 164; 117 E. R. 1246; *sub nom.* **R. v. LONDON CORPN., Re WADSWORTH v. SPAIN (QUEEN)**, **Re DE HABER v. PORTUGAL (QUEEN)**, 18 L. T. O. S. 39.

Annotations:—Refd. London Corpn. v. Cox (1867), L. R. 2 H. L. 239. **Mentd. Westoby v. Day** (1853), 2 E. & B. 605; **Portsmouth & Partridge v. Inclosure Comrs.** (1861), 3 L. T. 779; **Gladstone v. Musurus Boy** (1862), 1 New Rep. 178; **Kingsford v. G. W. Ry.** (1864), 10 Jur. N. S. 804; **Frith v. Guppy** (1866), L. R. 2 C. P. 32; **Larivière v. Morgan** (1872), 7 Ch. App. 554, n.; **The Charkieh** (1873), L. R. 4 A. & E. 59; **Cooke v. Gill** (1873), L. R. 8 C. P. 107; **Whinney v. Schmidt** (1873), L. R. 8 C. P. 118; **Worthington v. Jeffries** (1875), L. R. 10 C. P. 379; **The Parlement Belge** (1880), 5 P. D. 197; **Mighell v. Johore**, [1894] 1 Q. B. 149; **The Broadmayne**, [1916] P. 64.

163. —[—]Where the parties to a plaint in the county ct. appeared before the judge, & consented to a reference, without objecting to the want of jurisdiction, but one of them during the progress of the reference, objected to the jurisdiction of the arbitrators, on the ground that title to land came in question & the arbitrators proceeded with the reference:—**Held**: he was, nevertheless, entitled to a prohibition.

The general rule is that parties by acquiescing in proceedings cannot give jurisdiction (PARKE, B.).—**KNOWLES v. HOLDEN** (1855), 24 L. J. Ex. 223; 25 L. T. O. S. 102; 19 J. P. 580.

Annotations:—Consd. R. v. Rogers (1887), 57 L. J. Q. B. 143. **Refd. London Corpn. v. Cox** (1867), L. R. 2 H. L. 239; **Combe v. De La Bere** (1882), 22 Ch. D. 316; **Farquharson v. Morgan**, [1894] 1 Q. B. 552.

164. —[—]—Devise of a copyhold to three persons in fee, who were also appointed exors. of the will. The three proved the will. Two of them by deed released their interests & estate in the copyholds to the third, to the intent that she might be admitted alone. The lord of the manor claimed a treble fine, & had not admitted. A case having been stated without pleadings, in which the question was whether the lord was or was not entitled to a treble fine on admittance, the ct. of Q. B. decided that he was entitled to a single fine only, the deed operating as a disclaimer, & the fact that all three had proved the will not preventing any of them from disclaiming the devise under it. Error having been assigned, the Ct. of Exchequer Chamber refused to hear the case, on the ground that the Common Law Procedure Act, 1852 (c. 76), authorises the statement of cases only where something is claimed which might be the subject of an action, & the lord not being entitled to sue for a fine before admittance, this case was not within the provisions of the Act.

No consent or waiver can give jurisdiction if we have none (JERVIS, C.J.).—**WELLESLEY (LORD) v. WITHERS** (1855), 4 E. & B. 750; 119 E. R. 277. **Annotations:—Mentd. Bence v. Gilpin** (1868), L. R. 3 Exch. 76; **R. v. Garland** (1870), L. R. 5 Q. B. 269.

165. —[—]Where it is *pars judicis* to point out to the jury that they are going beyond their province, the defect of authority cannot be cured by acquiescence.—**CALEDONIAN Ry. Co. v. OGILVY** (1855), 25 L. T. O. S. 106; 2 Macq. 229, H. L.

Annotations:—Consd. Re Penny (1857), 7 E. & B. 660. **Refd. Rhodes v. Alredale Drainage Comrs.** (1876), 1 C. P. D. 380. **Mentd. Manley v. St. Helen's Canal & Ry.** (1858), 27 L. J. Ex. 159; **Chamberlain v. West End of London & Crystal Palace Ry.** (1863), 2 B. & S. 817; **Senior v. Met. Ry.** (1863), 2 H. & C. 258; **Wood v. Stourbridge Ry.** (1864), 16 C. B. N. S. 222; **Beckett v. Mid. Ry.** (1867), L. R. 3 C. P. 82; **Hall v. Bristol Corpn.** (1867), L. R. 2 C. P. 322; **Rickett v. Met. Ry.** (1867), L. R. 2 H. L. 175; **Metropolitan Board of Works v. Met. Ry.** (1868), L. R. 3 C. P. 612; **Hammersmith, etc. Ry. v. Brand** (1869), L. R. 4 H. L. 171; **R. v. Metropolitan Board of Works** (1869), L. R. 4 Q. B. 358; **Cale. Ry. v. Carmichael** (1870), L. R. 2 Sc. & Div. 56; **Glasgow City Union Ry. v. Hunter** (1870), L. R. 2 Sc. & Div. 78; **Metropolitan Board of Works v. McCarthy** (1874), L. R. 7 H. L. 243; **Benjamin v. Storr** (1874), 30 L. T. 362; **Bell v. Quebec Corpn.** (1879), 5 App. Cas. 84; **Hill v. Metropolitan Asylum Managers** (1879), 4 Q. B. D. 433; **Cale. Ry. v. Walker's Trustees** (1882), 7 App. Cas. 259; **Cowper-Essex v. Acton L. B.** (1889), 14 App. Cas. 153; **Horton v. Colwyn Bay & Colwyn U. C.**, [1908] 1 K. B. 327.

166. —[—]—**LONDON CORPN. v. COX**, No. 23, *ante*.

167. —[—]—It is urged that consent has waived the objection. I do not understand what is meant by waiving the objection. In this case the registrar had no jurisdiction to make the order to try the action in a county ct. The parties cannot by consent confer a jurisdiction which does not exist (BRAMWELL, L.J.).—**FOSTER v. USHERWOOD** (1877), 3 Ex. D. 1; 47 L. J. Q. B. 30; 37 L. T. 389; 26 W. R. 91, C. A.

Annotations:—Mentd. Neale v. Clarke (1879), 4 Ex. D.

286; *Gray v. Hopper* (1888), 21 Q. B. D. 246; *Hodgson v. Bell* (1890), 24 Q. B. D. 525; *Sneade v. Wotherton Barytes & Lead Mining Co.* (1904), 90 L. T. 53; *Charles v. Cory* (1919), 63 Sol. Jo. 212.

168. —.]—You cannot waive an objection to jurisdiction for if this ct. has no jurisdiction the consent of the parties cannot confer it (*per Cur.*).—*BUSE v. ROPER* (1879), 41 L. T. 457, C. A. *Annotation*:—*Mentd.* *Turner v. Bridgett* (1882), 51 L. J. Q. B. 377.

169. —.]—The consent of parties cannot give the ct. a jurisdiction which it does not otherwise possess (LORD ESHER, M.R.).—*Re AYLMEY, Ex p. BISCHOFFSHEIM* (1887), 20 Q. B. D. 258; 57 L. J. Q. B. 168; 36 W. R. 231; 4 T. L. R. 174, C. A.

170. —.]—Where total absence of jurisdiction appears on the face of the proceedings in an inferior ct., the ct. is bound to issue a prohibition, although appct. for the writ has consented to or acquiesced in the exercise of jurisdiction by the inferior ct.—*FARQUHARSON v. MORGAN*, [1894] 1 Q. B. 552; 63 L. J. Q. B. 474; 70 L. T. 152; 58 J. P. 495; 42 W. R. 306; 10 T. L. R. 240; 9 R. 202, C. A.

Annotations:—*Consd.* *Alderson v. Palliser*, [1901] 2 K. B. 833; *Re Cundall & Vavasour* (1906), 95 L. T. 483; *R. v. Kensington Income Tax Comrs., Ex p. de Polignac*, [1917] 1 K. B. 486; *Simpson v. Crowle*, [1921] 3 K. B. 243; *Smythe v. Wiles*, [1921] 2 K. B. 66. *Refd.* *Lee v. Cohen* (1894), 71 L. T. 824; *R. v. Tristram*, [1902] 1 K. B. 816; *Clarke v. Knowles*, [1918] 1 K. B. 128.

171. —.]—When essential conditions not fulfilled.]—No consent of the parties can give jurisdiction when the conditions are not complied with (ESHER, M.R.).—*R. v. ESSEX JJ.*, [1895] 1 Q. B. 38; 64 L. J. M. C. 39; 71 L. T. 832; 59 J. P. 68; 43 W. R. 183; 11 T. L. R. 43; 39 Sol. Jo. 57; 14 R. 90, C. A.; *affd. sub nom. WEST HAM UNION v. ESSEX JJ. & LONDON COUNTY COUNCIL*, [1896] A. C. 443, H. L.

172. —.]—An agreement by a person domiciled or ordinarily resident in Scotland that a writ for breach of contract arising within the jurisdiction may be served on him in Scotland does not authorise the ct. to direct service of such a writ in Scotland, as to do so would be in direct contravention of R. S. C. Ord. 11, r. 1 (c).

The ct. is forbidden to exercise the jurisdiction which it is now asked to exercise, & cannot regard the contract of the parties as to the extent of its jurisdiction (LORD ESHER, M.R.).—*BRITISH WAGON CO., LTD. v. GRAY*, [1896] 1 Q. B. 35; 65 L. J. Q. B. 75; 73 L. T. 498; 44 W. R. 113; 12 T. L. R. 64; 40 Sol. Jo. 83, C. A.

Annotation:—*Distd.* *Montgomery v. Liebenenthal*, [1898] 1 Q. B. 487.

173. —.]—An affidavit in support of an application for leave to issue a judgment summons out of the district of the county ct. in which judgment had been obtained was defective as not being in accordance with C. C. R., 1889, Form 52, A. Leave was granted & an order for commitment made. On an application for a writ of prohibition:—*Held*: the want of jurisdiction appeared on the face of the proceedings, & could not be waived.—*ALDERSON v. PALLISER*, [1901] 2 K. B. 833; 70 L. J. K. B. 935; 85 L. T. 210; 49 W. R. 706; 17 T. L. R. 742; 45 Sol. Jo. 722, C. A.

Annotations:—*Refd.* *Channel Coaling Co. v. Ross & Marshall* (1906), 78 L. J. K. B. 145. *Mentd.* *Smythe v. Wiles*, [1921] 2 K. B. 66.

174. —.]—*CLARKE BROTHERS v. KNOWLES*, No. 228, *post*.

See, now, R. S. C., Ord. 11, r. 2 A.

See, generally, PRACTICE & PROCEDURE.

B. Where no Objection taken at the Hearing.

175. *Effect of acquiescence—Want of jurisdiction not appearing on face of record.*—After sentence

below, prohibition cannot go unless want of jurisdiction appears on the face of the proceedings.

Where the want of jurisdiction does not appear upon the face of the proceedings, if deft. below will lie by & suffer that ct. to go on under an apparent jurisdiction, . . . it would be unreasonable that this party who, when deft. below, has lain by & concealed from the ct. below a collateral matter, should come hither after sentence against him there & suggest that collateral matter as a cause of prohibition & obtain a prohibition upon it, after all this acquiescence in the jurisdiction of the ct. below (LORD MANSFIELD, C.J.).—*BUGGIN v. BIENNETT* (1767), 4 Burr. 2035; 98 E. R. 60.

Annotations:—*Consd.* *Roberts v. Humby* (1837), 3 M. & W. 120; *London Corp. v. Cox* (1867), L. R. 2 H. L. 239; *Farquharson v. Morgan*, [1894] 1 Q. B. 552. *Refd.* *Caton v. Burton* (1775), 1 Cowp. 330; *Bailey v. Thompson* (1848), 12 J. P. Jo. 293; *Re Lenaghan, Robinson v. Lenaghan* (1848), 2 Exch. 333; *Jackson v. Beaumont* (1855), 11 Exch. 300; *Alderson v. Palliser* (1901), 70 L. J. K. B. 935.

176. —.]—Where an action was brought in an inferior ct. & deft. appeared at the trial & made no objection to the jurisdiction of the ct. while the case was proceeding, but suffered the ct. to act without protest or objection, as if it had jurisdiction, down to actual payment of damages & costs:—*Held*: it was too late to apply for a prohibition, even though the party had no opportunity of applying earlier to the superior ct., unless the want of jurisdiction appeared upon the face of the proceedings.—*YATES v. PALMER* (1849), 6 Dow. & L. 283; *Cox, M. & H.* 314; *Rob. L. & W.* 87; 14 L. T. O. S. 109; 13 J. P. Jo. 380.

Annotations:—*Refd.* *Knowles v. Holden* (1855), 24 L. J. Ex. 223; *Farquharson v. Morgan*, [1894] 1 Q. B. 552.

177. —.]—A prohibition was refused because the party applying had submitted to the jurisdiction of the spiritual ct.—*SMITH v. POYNDRILL'S EXECUTORS* (1627), Cro. Car. 97; 79 E. R. 686.

Annotation:—*Refd.* *Woodward v. Makepeace* (1688), 1 Salk. 164.

178. —.]—Where an appeal against an order of removal has been tried with the acquiescence of applts. & resps., & the order quashed, a *certiorari* to remove the proceedings for the purpose of quashing the order of sessions will not be granted, although resps. received no notice of trial, as required by a rule of ct. of the sessions, & were consequently wholly unprepared for the trial.—*R. v. EAST RIDING OF YORKSHIRE JJ.* (1834), 3 Nev. & M. K. B. 93; 2 Nev. & M. M. C. 80.

179. —.]—A party, whose land had been taken under a local Act, applied for a *certiorari* to bring up the inquisition held before a compensation jury, on the ground that the inquisition did not state such a notice to treat for compensation as was requisite under the Act to give jurisdiction:—*Held*: a *certiorari* would be refused, it appearing, on affidavit that appct. had consented to waive the notice, & requested that the jury might be summoned for a day too near to admit of proper notice under the Act.—*R. v. SOUTH HOLLAND DRAINAGE COMMITTEE MEN* (1838), 8 Ad. & El. 429; 1 Per. & Dav. 79; 1 Will. Woll. & H. 647; 8 L. J. Q. B. 64; 3 J. P. 589; 112 E. R. 901.

Annotations:—*Refd.* *R. v. Manchester & Leeds Ry.* (1838), 1 Per. & Dav. 164; *R. v. Swansea Harbour Trustees* (1839), 8 Ad. & El. 439; *Taylor v. Clemson* (1844), 11 Cl. & Fin. 610; *R. v. Surrey JJ.* (1870), L. R. 5 Q. B. 466; *R. v. Steward* (1880), 5 Q. B. D. 179; *R. v. Williams, Ex p. Phillips*, [1914] 1 K. B. 608. *Mentd.* *R. v. Stainforth* (1847), 11 Q. B. 66; *R. v. Salop JJ.* (1859), 29 L. J. M. C. 39.

180. —.]—The county cts. under County Cts. Act, 1846 (c. 95), s. 58, had power to try an action of debt on a judgment recovered in Q. B. Where, in such an action, the existence of the record, which was disputed, had been proved by an examined copy:—*Held*: a finding for pltf. could

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not be impeached if deft. at the trial took no objection &, after the evidence had been admitted, proved a set-off.—*WINSON v. DUNFORD* (1848), 12 Q. B. 603; *Cox, M. & H.* 132; 18 L. J. Q. B. 14; 11 L. T. O. S. 472; 12 Jur. 629; 12 J. P. Jo. 403; 116 E. R. 996.

181. —.]—If a person summoned before justices for non-payment of a church-rate submits certain objections to the validity of the rate to the justices for decision, & they overrule the objections & order payment, the ct. will not grant a *certiorari* to bring up the order for the purpose of having it quashed.

A party cannot be allowed to lead the justices to think that they may go on to decide, & then come to the ct. to quash their order (*WIGHTMAN, J.*).—*R. v. KNOX* (1863), 32 L. J. M. C. 257; 8 L. T. 330; 27 J. P. 327; 11 W. R. 703.

182. —.]—The rules of the W. friendly society did not provide that disputes should be referred to justices, but on a dispute the member proceeded before justices, & the secretary of the society did not call the justice's attention to his want of jurisdiction under 21 & 22 Vict. c. 101, s. 5, & an order was made on the society to pay money:—*Held*: the society was not entitled to a *certiorari* to quash the order, having by their conduct acquiesced in the jurisdiction.—*R. v. WEST LONDON PHILANTHROPIC BURIAL SOCIETY* (1869), 33 J. P. 614.

183. —.]—A writ of prohibition to an inferior ct., that has exceeded its jurisdiction, though of right is not of course, & where the objection to the jurisdiction is not apparent & depends upon some fact in the knowledge of appt., & he does not take the objection till after judgment, without substantial excuse for the delay, the ct. will decline to interpose.—*BROAD v. PERKINS* (1888), 21 Q. B. D. 533; 57 L. J. Q. B. 638; 60 L. T. 8; 53 J. P. 39; 37 W. R. 44; 4 T. L. R. 775, C. A.

Annotations:—*Refd.* *Farquharson v. Morgan*, [1894] 1 Q. B. 552. *Mentd.* *R. v. Speyer*, *R. v. Cassel*, [1916] 1 K. B. 595.

184. —.]—An information was preferred against D., who, thinking that the summons was under Town Police Clauses Act, 1847 (c. 89), s. 28, under which the maximum fine was 40s. pleaded guilty, but on the solr. who was prosecuting stating the facts & pointing out that the summons was under the Vagrancy Act, 1824 (c. 83), deft. withdrew his plea of guilty, & the case proceeded & he was convicted, no adjournment of the case or amendment of the summons having been asked for. The justices imposed a fine of £20 which they had power to do if the information were under the Vagrancy Acts. Upon a writ of *certiorari* to bring up & quash the conviction:—*Held*: having regard to the fact that deft. was told in ct. that the charge was under the Vagrancy Act, & did not ask for an adjournment or for an amendment, the information was a sufficient information under the Vagrancy Act, & the ct. ought not to interfere with the conviction.—*R. v. TABRUM, Ex p. DASH* (1907), 97 L. T. 551; 71 J. P. 325; 21 Cox, C. C. 529, D. C.

PART IV. SECT. 10, SUB-SECT. 3.—A.

188 i. Unconditional appearance—Waiver.—*DUDLEY v. JONES* (1876), 1 R. & C. 306.—CAN.

188 ii. —.]—*Re HAWKINS v. BATZOLD* (1901), 2 O. L. R. 704; 21 C. L. T. 579; 22 C. L. T. 14.—CAN.

188 iii. —.]—A ct. has no right to enforce a personal money claim against a person who is neither domiciled nor resident within its jurisdiction,

unless he has appeared to the process.—*RUSSIA (EMPEROR) v. PROSKOURIAKOFF* (1908), 7 W. L. R. 766; 8 W. L. R. 10, 461; 18 Man. L. R. 56.—CAN.

188 iv. —.]—*MEAR v. BISHOP & ANDREWS* (1887), 6 N. Z. L. R. 299.—N.Z.

a. Whether waiver by appearance applies to garnishee proceeding.—The primary debtor resided within the jurisdiction, but the garnishee resided in B. C. At the hearing the garnishee

appeared by his agent, & raised no objection to the jurisdiction. The debtor disputed the jurisdiction, & the judge refused to proceed:—*Held*: the principle upon which deft. in an action who is not subject to the jurisdiction confers it by appearing, has no application to a garnishee proceeding.—*Re WILSON v. POSTLE* (1901), 2 O. L. R. 203; 21 C. L. T. 382.—CAN.

t. —.]—*NELSON v. LEUZ* (1905), 9 O. L. R. 50.—CAN.

SUB-SECT. 2.—WHERE JURISDICTION CONTINGENT OR CONDITIONAL.

185. Contingent jurisdiction—General rule.—Where an inferior ct. has no jurisdiction from the beginning, a party by taking a step in a cause before it, does not waive his right to object to the want of jurisdiction. But jurisdiction is sometimes contingent; in such case, if deft. does not, by objecting at the proper time exercise his right of destroying the jurisdiction, he cannot do so afterwards (*ERLE, J.*).—*JONES v. JAMES* (1850), 1 L. M. & P. 65; *Cox, M. & H.* 290; *Rob. L. & W.* 197; 19 L. J. Q. B. 257; 14 J. P. Jo. 271.

Annotations:—*Consd.* *Knowles v. Holden* (1855), 24 L. J. Ex. 223; *Moore v. Gamgee* (1890), 25 Q. B. D. 244. *Refd.* *Wadsworth v. Spain* (Queen), *De Haber v. Portugal* (Queen) (1851), 17 Q. B. 171; *Mouffet v. Washburn* (1886), 54 L. T. 16; *Farquharson v. Morgan*, [1894] 1 Q. B. 552; *Alderson v. Palliser*, [1901] 2 K. B. 833.

186. Effect of appearance—Without protest.—*TAYLOR v. CLEMONS*, No. 89, *ante*.

Waiver by foreign Sovereigns.—*See ACTION*, Vol. I., p. 49, Nos. 391–395.

Waiver by ambassadors, etc.—*See CONSTITUTIONAL LAW*, Vol. XI., p. 542, Nos. 462–465.

Submission to jurisdiction—Foreign judgment.—*See CONFLICT OF LAWS*, Vol. XI., p. 418, Nos. 1068 *et seq.*

Jurisdiction of county courts.—*See COUNTY COURTS*, Vol. XIII., pp. 456 *et seq.*

See, generally, PRACTICE & PROCEDURE.

SUB-SECT. 3.—WHAT AMOUNTS TO WAIVER.

A. Effect of Appearance.

187. Unconditional appearance.—*ANON.*, No. 99, *ante*.

188. — Waiver.—By appearance all defaults before are salved, though it be in an inferior ct. (*per CUR.*).—*WHEELER v. —* (1678), 1 Freem. K. B. 468; 89 E. R. 350.

189. —.]—Where a writ of *latitat* was served on Jan. 25, but not tested until Jan. 30, on which day it was returnable:—*Held*: writ was bad but, as deft.'s solr. had written to plff.'s solr. on Jan. 28 undertaking to appear, & receive a declaration & give security for costs, the objection to the writ had been waived.—*ANON.* (1819), 1 Chit. 129.

Annotation:—*Apld.* *Holt v. Ede* (1843), 1 Dow. & L. 68.

190. —.]—Deft. in actual custody of the sheriff of a county upon process of an inferior ct. having removed himself into this ct. by *habeas corpus cum causa* directed & delivered to the sheriff only, & having been thereupon committed to the custody of the marshal, moved to be discharged on affidavit entitled as of the cause in this ct. Deft. was arrested in G., in an action of debt instituted in the ct. of the Chancellor of the University of Oxford, & on a warrant, issuing from that ct. & reciting that the plff. had sworn that the deft. was a member of the university, was suspected of flight, & as deponent believed, would not appear, but would withdraw himself out of the precincts of the university. Nothing further appeared as to the deft.'s residence, either by the

warrant, or other proceedings in the Chancellor's Ct. or by the affidavits & sheriff's return to the *habeas corpus* in this ct. After the arrest, deft. had appeared in the Chancellor's Ct., waived the objection to the jurisdiction, & entered into the merits; upon which a decree was given that he should pay the debt, & remain in custody till he paid it, which was sworn to be conformable (as the deponent believed) to the practice of the ct. After this the *habeas corpus* issued:—*Held*: (1) the affidavit was rightly entitled, though no step in the cause had been taken in this ct.; (2) deft. was entitled to his discharge for want of proof of residence independently of the question whether or not the process of the Chancellor's Ct. could be executed at the place in question; (3) the *habeas corpus* was not too late, & deft. might still insist before this ct. on the want of jurisdiction.—*PERMAN v. WEST* (1835), 3 Ad. & El. 405; 1 Har. & W. 401; 5 Nev. & M. K. B. 291; 4 L. J. K. B. 232; 111 E. R. 467.

191. ———.]—*TAYLOR v. CLEMSON*, No. 89, *ante*.

192. ———.]—*BEACH v. REES* (1851), 18 L. T. O. S. 75.

193. ———.]—After service of writ of summons on a British subject resident abroad, plff. obtained an order under the C. L. P. Act, 1852 (c. 76), s. 18, to prove the amount of his debt & damages before the master; but this order was obtained irregularly, on an affidavit of service of the writ only, & without an affidavit as to the existence of a good cause of action:—*Held*: the irregularity was waived by deft.'s attending before the master, & entering upon the inquiry before him.—*HARRISON v. WILLIAMS* (1854), 24 L. T. O. S. 143.

194. ———.]—A British subject, residing in France, was there served with a writ of summons in the form prescribed by C. L. P. Act, 1852 (c. 76), s. 18. Deft. appeared to the writ, & after declaration, found that the cause of action did not arise within the jurisdiction of the ct. & was not in respect of the breach of a contract made within the jurisdiction, whereupon he applied to set aside the writ & proceedings under it:—*Held*: there was no irregularity in the writ itself, & deft., by appearing, had given the ct. jurisdiction.—*FORBES v. SMITH* (1855), 10 Exch. 717; 24 L. J. Ex. 167; 24 L. T. O. S. 263; 1 Jur. N. S. 383; 3 W. R. 214; 3 C. L. R. 505; 156 E. R. 628.

Annotations:—*Distd.* Bayne v. Slack (1857), 3 C. B. N. S. 363. *Apld.* Staniforth v. Richmond (1865), 13 W. R. 724. *Consd.* Oulton v. Radcliffe (1874), L. R. 9 C. P. 189.

Mentd. Jackson v. Spittall (1870), L. R. 5 C. P. 542.

195. ———.]—If deft., served with a writ of summons abroad, appears, he will not be allowed to set aside the writ upon the ground that the cause of action declared on did not arise within the jurisdiction of the ct., & it makes no difference that the writ was not specially indorsed.—*STANIFORTH v. RICHMOND* (1865), 13 W. R. 724.

Annotation:—*Refd.* Oulton v. Radcliffe (1874), L. R. 9 C. P. 189.

196. ———.]—R., a merchant in London, effected a policy of insurance upon his own life with an insurance society, carrying on business in Edinburgh & London. Being indebted to V., who was in business in London, R., in 1851, assigned the policy to him as a security. R. had formerly carried on business in Scotland, & his estate was, in 1854, sequestrated, according to the law of Scotland, & C. was appointed trustee of the sequestrated estate. In Aug. 1857 R. died, & C. raised an action of count & reckoning in Scotland against V. for an account of R.'s estate vested in

him; & in Sept. of that year he laid an arrestment on the moneys secured by the policy, until security should be given to answer the claim. V. appeared in that suit, & put in his answer thereto, but before putting in his answer, he filed a bill against the trustees of the society & C., praying payment of the money assured. No decree or sentence was pronounced in the Scottish suit. C. appeared to the bill, & by an order made on a motion, on which C. appeared, the money was ordered to be paid into ct., without prejudice to the Scottish arrestment. C. put in his answer, contending that the Ct. of Session was competent to try the question between the parties, & had attached the fund before the bill was filed. A decree was then made directing an account. C. appeared before the chief clerk, but afterwards withdrew. V.'s vouchers had been lodged in the Ct. of Session, & an interdict to prevent these being taken out of Scotland was obtained by C. By an order in 1859 the moneys in ct. were ordered to be paid to V. The trustees of the insurance society & C. appealed against these several orders:—*Held*: the appeal would be dismissed as by the appearance of C. he must be considered to have acquiesced in the inquiry before the chief clerk & as the Ct. of Ch. had full jurisdiction in the case.—*VENNING v. LOYD* (1859), 1 De G. F. & J. 193; 29 L. J. Ch. 152; 1 L. T. 277; 6 Jur. N. S. 81; 8 W. R. 117; 45 E. R. 332, L. C. & L. J. J.

Annotations:—*Refd.* Steele v. Stuart (1863), 3 New Rep. 291. *Mentd.* Martin v. Powning (1869), 4 Ch. App. 356.

197. ———.]—A bill was filed against four trustees in India of a fund in India, & one formal deft. in England, to recover money payable in England. The trustees were served out of the jurisdiction, appeared, answered & entered into evidence:—*Held*: as defts. had not demurred or pleaded or moved to discharge the order for service, the ct. might determine the questions between the parties.—*EDWARDS v. WARDEN* (1874), 9 Ch. App. 195; 43 L. J. Ch. 611; 30 L. T. 510; 22 W. R. 669, L. J. J.; *on appeal*, (1876), 1 App. Cas. 281, H. L.

Annotations:—*Mentd.* Hughes v. Coles (1884), 27 Ch. D. 231; *Re* Turner, Klaffenberger v. Groombridge, [1917] 1 Ch. 422.

198. ———.]—Where a writ was issued out of the Ct. of Common Pleas at Lancaster in an action in which deft. resided out of the jurisdiction:—*Held*: deft., by a voluntary appearance being entered, had estopped himself from trying to set aside the writ.—*OULTON v. RADCLIFFE* (1871), L. R. 9 C. P. 189; 43 L. J. C. P. 87; 30 L. T. 22; 22 W. R. 372.

Annotation:—*Refd.* R. v. Thompson (1881), 12 Q. B. D. 261.

199. ———.]—A domiciled Scotsman by his will appointed six exors., three of whom were resident in England, & three in Scotland. The bulk of testator's property was in Scotland, but he was possessed of about £25,000 in England. The will was proved in both countries by all the exors. A beneficiary under the will commenced an action in England against all the exors., who appeared without protest, to administer the entire estate. All the assets had, in the meantime, been transferred to Scotland. At the trial the defts. objected that the ct. had no jurisdiction to make an administration order, and the judge, in the exercise of his discretion, refused to make the order. On appeal:—*Held*: defts. had, by appearing without protest, submitted to the jurisdiction, there was no discretion to exercise, & plff. was entitled as of right to an administration order.—*Re ORR EWING, ORR EWING v. ORR EWING* (1882), 22 Ch. D. 456; 52 L. J. Ch. 529; 48 L. T. 555; 31

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W. R. 464, C. A.; *on appeal, sub nom.* EWING v. ORR EWING (1883), 9 App. Cas. 34, H. L.

*Annotations:—***Refd.** *Re* Lane, *Lane v. Robin* (1886), 55 L. T. 149. **Mentd.** *Re* Hawthorne, *Graham v. Massey* (1883), 23 Ch. D. 743; *Re* Matheson (1884), 51 L. T. 111; *Re* Artola Hermanos, *Ex p. André Châle* (1890), 24 Q. B. D. 640; *British South Africa Co. v. Companhia de Moçambique*, [1893] A. C. 602; *A. G. v. Johnson*, [1907] 2 K. B. 885; *Re Bonnetot*, *Surrey v. Peirin*, [1917] P. 233.

200. ———. **R. S. C., Ord. 70, r. 2.]**—Appearance to a writ is a “fresh step” taken within the meaning of Ord. 70, r. 2, & a writ which is irregular to the knowledge of deft. cannot be set aside on his application after appearance.—**MULCKERN v. DOERKS** (1884), 53 L. J. Q. B. 526; *sub nom.* **MULKERN v. DOERKS**, 51 L. T. 429; 28 Sol. Jo. 688, D. C.

*Annotations:—***N.F.** *Hunt v. Worsfold*, [1896] 2 Ch. 224. **Mentd.** *Re* Derbon, *Derbon v. Collis* (1888), 58 L. T. 519.

201. ———. **—**—Where an action has been remitted under County Cts. Act, 1856 (c. 108), s. 26, by consent of deft., to the county ct. for trial & deft. has appeared in the county ct., a writ of prohibition will not be granted even though there be a counterclaim for unliquidated damages.—**MOUFLET v. WASHBURN** (1886), 54 L. T. 16; 2 T. L. R. 295, D. C.

*Annotations:—***Refd.** *Farquharson v. Morgan*, [1894] 1 Q. B. 552; *Alderson v. Palliser*, [1901] 2 K. B. 833.

202. ———. **—**—Where deft. appeared, & the case was heard & partly determined & adjourned to a future day, & at the second hearing deft. for the first time objected to the jurisdiction of the ct.:—**Held**: the objection to the jurisdiction was one which could be waived, & deft. had waived it.—**MOORE v. GAMGEE** (1890), 25 Q. B. D. 244; 59 L. J. Q. B. 505; 38 W. R. 669, D. C.

*Annotations:—***Refd.** *Alderson v. Palliser*, [1901] 2 K. B. 833; *Suckan v. Weiner* (1901), 17 T. L. R. 494; *Smythe v. Wiles*, [1921] 2 K. B. 66.

203. ———. **By bailiff to justify conduct in not making a levy—No waiver.]**—Where the bailiff of S. appeared before the county ct. judge of N. to justify his conduct in not making a levy, but was nevertheless ordered by the judge of N. to pay compensation:—**Held**: this was not such an acquiescence in the jurisdiction of the ct. of N. as would estop the bailiff from obtaining a prohibition against the order of the judge of N.—**R. v. SIROPSHIRE COUNTY COURT JUDGE** (1887), 20 Q. B. D. 242; *sub nom.* **R. v. ROGERS**, 57 L. J. Q. B. 143; 58 L. T. 86; *sub nom.* **R. v. NEWPORT (SALOP) COUNTY COURT JUDGE, ASHLEY v. NORRIS**, 36 W. R. 476; *sub nom.* **ASHLEY v. NORRIS**, 4 T. L. R. 144, D. C.

*Annotation:—***Consd.** *Watson v. White*, [1896] 2 Q. B. 9.

204. ———. **When leave not obtained for joinder of actions—No waiver.]**—Pltf. claimed a declaration that an alleged mtge. of land to deft. created no charge on the land comprised in it, & he claimed possession of the land, & alternatively an account of what was due on the mtge. & redemption. Pltf. was a judgment creditor of the mtgor. & had obtained an order appointing him receiver of the rents of the land, & the order had been registered. On a summons by deft. to stay all proceedings in the action, on the ground that no leave of the ct. had been obtained to join another cause of action with the action for the recovery of the land:—**Held**: (1) though deft. had entered an appearance to the writ, it was not too late for him to take the objection; (2) pltf. was entitled without leave to ask for possession of the land in either alternative, immediate possession if the mtge. was invalid, & possession on payment of what should be found due if the mtge. was valid.—**HUNT**

v. WORSFOLD, [1896] 2 Ch. 224; 65 L. J. Ch. 548; 74 L. T. 456; 44 W. R. 461; 40 Sol. Jo. 458.

205. ———. **No waiver by co-defendant.]**—**RUSSELL (JOHN) & CO., LTD. v. CAYZER, IRVINE & CO., LTD.**, No. 25, *ante*.

206. Appearance under protest—No waiver.]—A parishioner appeared under protest to a citation. The judge of the Ecclesiastical Ct. overruled the protest, & ordered the party to appear absolutely. He thereupon declared in prohibition, setting forth the citation & the other proceedings. On demurrer to the declaration:—**Held**: the declaration was good, the citation being insufficient to give jurisdiction.—**FRANCIS v. STEWARD** (1844), 5 Q. B. 984; 1 Dav. & Mer. 748; 3 L. T. O. S. 125; 9 J. P. 54; 8 Jur. 1066; 114 E. R. 1519.

*Annotation:—***Mentd.** *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239.

207. ———. **—**—Defts. appear, what else ought they to have done. They could not enter a conditional appearance as there is no power under the rule to enter a conditional appearance. All that they can do is to appear under protest. They are ignorant how the case will be put against them. There has been no waiver of the objection, & they have not attorned to the jurisdiction. The writ must be set aside (**MATHEW, J.**).—**MAYER v. CLARETIE** (1890), 7 T. L. R. 40, D. C.

*Annotation:—***Consd.** *Firth v. De Las Rivas*, [1893] 1 Q. B. 769.

208. ———. **—**—A foreigner resident out of the jurisdiction, who had been served out of the jurisdiction with a notice of a writ of summons, appeared under protest. In the margin of the appearance was a memorandum that it was entered under protest in order to preserve deft.'s right to object to the jurisdiction:—**Held**: deft. could properly enter an appearance under protest without losing his right to object to the jurisdiction.—**FIRTH & SONS v. DE LAS RIVAS**, [1893] 1 Q. B. 768; 62 L. J. Q. B. 403; 41 W. R. 493; 37 Sol. Jo. 456, D. C.; *subsequent proceedings, sub nom.* **FIRTH & SONS v. DE LA RIVAS & PALMER** (No. 2), 69 L. T. 666, C. A.

209. ———. **—**—Deft. who objects to the jurisdiction has absolute right to appear under protest. The practice of the master in dealing with an appearance under protest of allowing deft. a reasonable time for applying to set aside the writ & then sealing the appearance with an entry that the appearance is to stand as unconditional unless deft. makes the application within the prescribed time has no statutory authority, & cannot limit the power of the ct. to enlarge the time for objecting to the jurisdiction. The meaning of the practice, which is necessary to prevent the hands of the ct. from being tied up indefinitely by a formal protest, is merely that the omission of deft. to apply to set aside the writ within the prescribed time raises a presumption against him of waiver of the objection to the jurisdiction & entitles the officials of the ct. in the ordinary course to treat the appearance as absolute.—**KEYMER v. REDDY**, [1912] 1 K. B. 215; 81 L. J. K. B. 266; 105 L. T. 841, C. A.

210. When party ignorant of defect in jurisdiction—No waiver.]—Neither in bkpcy. nor in any other proceeding can it be right, nor is it consistent with the rules of practice of this ct., to consider a party bound by acquiescence when not cognisant of his rights (*per CUB.*).—*Re CHAMBERS, Ex p. CHAMBERS* (1835), 1 Deac. 197; 2 Mont. & A. 440.

*Annotations:—***Refd.** *Re Durrant, Ex p. Thirkill* (1836), 5 L. J. Boy. 40; *Re Bakewell, Ex p. Butler* (1842), 2 Mont. D. & De G. 731; *Re Rolfe, Ex p. Williams* (1857), 29 L. T. O. S. 25. **Mentd.** *Re Newell, Ex p. Newell* (1838), 3

Deac. 333; *Re Prescott, Ex p. Prescott* (1840), 4 Jur. 852; *Re Scowcroft, Ex p. Rees* (1845), 6 L. T. O. S. 104.

211. ———.]—Where an action has been commenced in the Mayor's Ct., deft. does not, by entering appearance, not under protest, & taking other steps, waive his right to object to the jurisdiction so soon as he ascertains exactly what the nature of pltf.'s claim against him is.—*LEE v. COHEN* (1894), 71 L. T. 824; 39 Sol. Jo. 27, C. A. *Annotation*:—*Consd. Clarke v. Knowles*, [1918] 1 K. B. 128.

212. ———.]—*NATHAN v. BOTTOMLEY* (1903), 19 T. L. R. 421, D. C.

213. Appearance by solicitor without instructions—No waiver.—Deft., in his correspondence, protested against the jurisdiction of the English cts. but the solr. then acting for him in England entered an appearance for him, apparently under a mistake & without instructions to do so. A summons was then taken out on behalf of deft. to set aside the appearance entered for him & also to set aside the order giving leave to issue the writ & serve the notice of its issue out of the jurisdiction:—*Held*: the appearance could not be set aside, on the ground that deft.'s letters after service upon him of the notice amounted to a waiver of his objection & to an admission of the competency of the English cts.—*CROZIER, STEPHENS & Co. v. AUERBACH*, [1908] 2 K. B. 161; 77 L. J. K. B. 873; 99 L. T. 225; 24 T. L. R. 409; 52 Sol. Jo. 335, C. A.

Annotation:—*Mentd. Biddell v. Clemens Horst Co.*, [1911] 1 K. B. 934.

Submission to foreign jurisdiction.—*See* CONFLICT OF LAWS, Vol. XI., pp. 448–451, Nos. 1066–1080.

Submission to admiralty jurisdiction.—*See* ADMIRALTY, Vol. I., pp. 166, 187, Nos. 764–776.

In county court.—*See* COUNTY COURTS, Vol. XIII., pp. 550, 551.

See, generally, PRACTICE & PROCEDURE.

B. Other Cases.

214. Admission.—The Master of the Rolls assumed a jurisdiction on defts.' admission:—*Held*: pltf. was entitled to equitable relief by the direction of an account, & a decree retaining the bill for a year, to enable pltf. to try his title at law would be reversed.—*LEEDS (DUKE) v. NEW RADNOR CORPN.* (1789), 2 Bro. C. C. 518; 29 E. R. 284, L. C.

Annotations:—*Mentd. Cupit v. Jackson* (1824), M'Cle. 495; *Basingstoke Corpn. v. Bolton* (1852), 1 Drew. 270.

215. Pleading by prisoner.—A prisoner who is supersedeable, for want of filing a bill against him in time, waives the irregularity by afterwards pleading.—*PEARSON v. RAWLINGS* (1800), 1 East, 77; 102 E. R. 31.

216. Making defence.—On application at petty sessions by guardians of a union, for an order of maintenance under 2 & 3 Vict. c. 85, s. 1, the party charged attending, but not being ready to proceed, the case was postponed by consent, deft. agreeing to admit that notice of application has been served. The admission was made, & the guardians proved by a witness that the notice was signed by the proper parties. At the adjourned petty session deft., being still unprepared demanded, under

sect. 3, that the case should be heard at quarter sessions, & offered recognisances. The justices refused to take them, alleging that the case had already been entered upon at the last petty sessions. The hearing proceeded, & deft., by his attorney, cross-examined the witnesses, & addressed the justices in his defence. An order of maintenance was granted. On motion for a *certiorari*:—*Held*: assuming the justices to have been wrong in refusing to take the recognisances, the party charged had waived the objection by making his defence, & the writ would be refused.—*R. v. CLARKE* (1844), 6 Q. B. 349; Dav. & Mer. 286; 1 New Sess. Cas. 310; 13 L. J. M. C. 157; 8 J. P. 554; 8 Jur. 738; 115 E. R. 134.

217. ———.]—*BARKER v. WALLEY* (1849), 12 J. P. Jo. 487.

218. Acceptance of costs.—The acceptance of costs under a judge's order, which otherwise could not have been received at all, or the whole part of which could not have been received so soon, is a waiver of any objection to the order for want of jurisdiction.—*TINKLER v. HILDER* (1849), 4 Exch. 187; 7 Dow. & L. 61; Cox, M. & H. 246; Rob. L. & W. 71; 18 L. J. Ex. 429; 13 L. T. O. S. 238; 13 J. P. 412; 13 Jur. 684; 154 E. R. 1176.

Annotations:—*Mentd. Jossop v. Crawley* (1850), 15 Q. B. 212; *Winter v. Bartholomew* (1856), 25 L. J. Ex. 62; *Jousiffe v. Bayley* (1866), 15 L. T. 219; *Hills v. Renny* (1880), 5 Ex. D. 313.

219. Obtaining statement of case for superior court—No waiver.—A party who objects that the county ct. has no jurisdiction to determine a claim does not acquiesce in the jurisdiction of that ct., or waive his right to a writ of prohibition, by obtaining from the judge the statement of a case for the opinion of a superior ct.—*JACKSON v. BEAUMONT* (1855), 11 Exch. 300; 24 L. J. Ex. 301; 25 L. T. O. S. 185; 19 J. P. 532; 3 W. R. 521; 156 E. R. 844.

220. Taking declaration out of office.—A writ of summons issued under C. L. P. Act, 1852 (c. 76), s. 18, was served on Sept. 17 upon a British subject residing out of the jurisdiction at Jersey. On Oct. 27 pltf. obtained an order for leave to proceed, & filed a declaration on Oct. 28, charging deft. with a breach of promise of marriage, but the affidavit upon which the order was obtained was not so framed as to bring the case within the statute:—*Held*: in order to take advantage of the irregularity, it was incumbent on deft. to apply within a reasonable time, & the irregularity was waived by taking the declaration out of the office.—*BAYNE v. SLACK* (1857), 3 C. B. N. S. 363; 27 L. J. C. P. 14; 4 Jur. N. S. 192; 6 W. R. 171; 140 E. R. 781.

221. Mere respectful acquiescence on submission to ruling.—In order to constitute acquiescence, or waiver, it must be shown, that the party said or did something to give the ct. a jurisdiction it did not possess. Mere respectful acquiescence, or submission to the ruling of a ct., will not amount to a waiver of a right to complain of an illegal decision.—*BEAUDRY v. MONTREAL CORPN.* (1858), 11 Moo. P. C. C. 399; 31 L. T. O. S. 18; 22 J. P. 240; 6 W. R. 316; 14 E. R. 746, P. C.

222. Undertaking to postpone sale—After bill

PART IV. SECT. 10, SUB-SECT. 3.—B.

a. *Pleading—& going to trial on merits—Waiver.*—*LYNDS v. HOAR* (1881), 2 R. & G. 237; 1 C. L. T. 710.—CAN.

b. ———.]—*FRIESEN v. SMITH* (1892), 8 Man. L. R. 131.—CAN.

c. ———.]—In a suit tried by a competent ct. the parties,

having without objection joined issue & gone to trial upon the merits, cannot subsequently dispute the jurisdiction on the ground of irregularities in the initial procedure which, if objected to at the time, would have led to the dismissal of the suit.—*LEDGARD v. BULL* (1886), 1 L. L. R. 9 All. 191; L. R. 13 Ind. App. 134.—IND.

d. ———.]—*To merits.*—Deft., by pleading to the merits of the action,

accepts the jurisdiction & is not entitled, thereafter, to except to the jurisdiction of the ct.—*RAMSAY v. HAMBURG-AMERICAN PACKET CO.* (1899), Q. R. 17 S. C. 232.—CAN.

e. *Acquiescence with full knowledge of facts—Waiver.*—Complete acquiescence in the jurisdiction, with full knowledge of the facts, constitutes a waiver.—*GIBBINS v. CHADWICK* (1892), 8 Man. L. R. 209.—CAN.

Sect. 10.—Effect of consent or waiver of objection to: Sub-sect. 3, B. Sect. 11: Sub-sects. 1, 2 & 3, A.]

for injunction to restrain sale.]—Messrs. P., a firm of coal merchants, having borrowed a train of coal trucks from pltf. on certain terms, had also entered into an agreement with a railway co. The co. had detained & threatened to sell pltf.'s trucks to answer an alleged breach of the agreement by Messrs. P. Pltf. in Aug. 1858 filed a bill for an injunction to restrain the sale, & the co. undertook not to sell till the beginning of Michaelmas Term 1858. On Nov. 20, pltf. brought an action of trover, & obtained a verdict, with damages. On motion by pltf. that the costs of the suit might be paid by the co. it was contended that the ct. had no jurisdiction, or, if it had, that pltf. having elected to proceed at law, had abandoned his rights at equity:—*Held*: defts. must pay the costs of the suit, on the ground of the established jurisdiction of the ct. to protect property which is the subject of litigation, & also because defts. themselves by their undertaking had admitted the jurisdiction.—*NORTH v. GREAT NORTHERN RY. Co.* (1860), 2 Giff. 64; 29 L. J. Ch. 301; 1 L. T. 510; 6 Jur. N. S. 211; 66 E. R. 28.

223. Filing affidavits—Appearance by counsel.]—An order was made for substituted service in England, of a writ & notice of motion for injunction, on a person resident abroad. He did not enter an appearance, but appeared by counsel on the motion for the injunction, filed affidavits & argued the case on the merits:—*Held*: the proper course for deft. to have taken was to have applied at once to the judge to whose ct. the cause was attached to discharge the order for service, & that not having done so, but filed affidavits, appeared by counsel, & argued the case on the merits, he could not now complain of the order for service.—*BOYLE v. SACKER* (1888), 39 Ch. D. 249; 58 L. J. Ch. 141, C. A.
Annotation:—Refd. Whiffen v. Mallings Licensing JJ., [1892] 1 Q. B. 362.

224. Taking out summons for delivery of statement of claim.]—A writ was issued in the general form, without the leave of the ct. against a person who at the date of the writ was out of the jurisdiction. Pltf. obtained an order for substituted service of the writ within the jurisdiction, & having served the writ in accordance with the order, signed judgment against deft. for default of appearance. Deft. took out a summons asking that the judgment might be set aside, & that pltf. might be ordered to deliver a statement of claim:—*Held*: the order for substituted service was not void, but was only an irregularity which could be waived, & by taking out the summons for pltf. to deliver a statement of claim deft. had waived the irregularity, & was not entitled to have the judgment set aside.—*FRY v. MOORE* (1889), 23 Q. B. D. 305; 58 L. J. Q. B. 382; 61 L. T. 545; 37 W. R. 565, C. A.

Annotations:—Refd. Whiffen v. Mallings Licensing JJ., [1892] 1 Q. B. 362; *Smythe v. Wiles*, [1921] 2 K. B. 66.
Mentd. Re Urquhart, Ex p. Urquhart (1890), 24 Q. B. D. 723; *Wilding v. Bean*, [1891] 1 Q. B. 100; *Worcester*

225 i. Taking step in action—Appeal after default judgment—Waiver.]—*RAND v. ROCKWELL* (1871), 8 N. S. R. 199.—*CAN.*

225 ii. — Answering bill—Waiver.]—*MOORE v. BUCKNER* (1881), 28 Gr. 606.—*CAN.*

225 iii. — Applying for leave to defend on merits.]—Defts., by applying for leave to defend on the merits, waived their right to object to the jurisdiction.—*BEATON v. SJOLANDER*

(1903), 9 B. C. R. 439.—*CAN.*

1. Taking chances at trial—Waiver.]—Defts. appeared at the trial, & after their objection to the jurisdiction had been overruled, proceeded with the defence & cross-examined witnesses:—*Held*: they had thereby precluded themselves from objecting to the jurisdiction.—*Re GUY v. GRAND TRUNK RY. Co.* (1884), 10 P. R. 372.—*CAN.*

g. — — — — —.]—*Re SOULES v.*

City & County Banking Co. v. Firbank, Pauling, [1894] 1 Q. B. 784; *Re Cliff, Edwards v. Brown*, [1895] 2 Ch. 21; *Jay v. Budd*, [1898] 1 Q. B. 12; *Porter v. Freudenberg, Kreglinger v. Samuel & Rosenfeld, Re Merton's Patents*, [1915] 1 K. B. 857.

225. Taking step in action—When step required only if objection waived.]—In order to establish a waiver of the right to object to the issuing of a writ out of the jurisdiction it must be shown that the party alleged to have waived his objection has taken some step which is only necessary or only useful if the objection has been actually waived, or if the objection has never been entertained at all (*CAVE, J.*).—*REIN v. STEIN* (1892), 66 L. T. 469, D. C.; *affd.*, [1892] 1 Q. B. 753, C. A.
Annotations:—Mentd. The Elder, [1893] P. 119; *Duval v. Gans*, [1904] 2 K. B. 685; *Mutzenbecher v. Aseguradora Espanola* (1905), 94 L. T. 127; *Johnson v. Taylor*, [1920] A. C. 144.

226. Answering interrogatories—Action transferred from county court to High Court—No waiver.]—Service having been effected in Scotland under C. C. R. 1889, Ord. 51, r. 23, on deft. in an administration action, the action was transferred to the High Ct. on the ground that the value of the estate exceeded the limit of the jurisdiction of the county ct. Deft. answered interrogatories in the county ct., but objected to the order for service both in the county ct. & the High Ct.:—*Held*: (1) though the order for service would have been valid if the action had remained in the county ct., after the transfer, the question depended upon R. S. C. Ord. 11, rr. 1 (d), & 2, & deft. ought to have an opportunity of filing evidence as to the domicile of testator, & as to whether there was an adequate concurrent jurisdiction in Scotland; (2) there had been no waiver by deft. of the right to object to the service.—*WOOD v. MIDDLETON*, [1897] 1 Ch. 151; 66 L. J. Ch. 149; 75 L. T. 480; 45 W. R. 184; 41 Sol. Jo. 157.

227. Undertaking to plead to issue—Order for particulars obtained—Order for discovery of documents.]—In an action in the Mayor's Court for a sum exceeding £50, the whole cause of action did not arise within the city of London. Deft. obtained orders for particulars on his undertaking to plead to the issue. He also obtained an order for discovery of documents. Deft. having applied for a writ of prohibition:—*Held*: he had waived the objection to the jurisdiction, & a writ of prohibition should not issue.—*SUCKAN v. WEINER* (1901), 17 T. L. R. 494, D. C.

228. Demand for particulars—Address given for service—No waiver.]—The demand by a deft. for particulars of a claim, in order to enable him to ascertain whether any part of the cause of action arose within the district in which the action is brought, & the giving by him of an address for service, are not such steps in the action as to disentitle him to object to the jurisdiction of the ct.

Where upon the face of the record itself, it is apparent that there is a total lack of jurisdiction, deft. may obtain a writ of prohibition, even though he may have acquiesced in the proceedings down to the time when he applies for the writ.—*CLARKE BROTHERS v. KNOWLES*, [1918] 1 K. B. 128; 87 L. J. K. B. 189; 118 L. T. 253, D. C.

Annotation:—Refd. Smythe v. Wiles, [1921] 2 K. B. 66.

LITTLE (1888), 12 P. R. 533.—*CAN.*

h. Going to trial on first trial—New trial—No waiver.]—A party not raising the question of jurisdiction on the first trial of a case in ct., is not prohibited from raising the question upon the second trial, a new trial having been granted.—*DEADMAN v. AGRICULTURAL & ARTS ASSOCN.* (1874), 6 P. R. 176.—*CAN.*

k. — — — — —.]—*Re EVANS v. SUTTON* (1880), 8 P. R. 367.—*CAN.*

229. Concurrence in acts of justices.]—Upon cause being shown against a rule nisi for a distress warrant against C. for non-payment of church rates, it appeared that at the hearing of the summons he had been represented by the same attorney as another ratepayer who had been summoned upon a similar information. The affidavit in support of the rule stated that at the hearing neither C. nor his attorney objected to the jurisdiction, & that C.'s attorney had said he would take the decision in C.'s case first; but it was not stated that C. did not object to the validity of the rate or his liability. The affidavit of C. in answer alleged that throughout he *bonâ fide* objected to the validity of the rate, & that at the hearing he did so object:—*Held*: as it appeared that there had been a concurrence on C.'s part in the act of the justices, a *certiorari* would not have been granted in such case to quash the order & therefore the rule must be discharged without costs.—*R. v. LEICESTER JJ. & COMPTON* (1860), 29 L. J. M. C. 203; 2 L. T. 436; 24 J. P. 391; 8 W. R. 563.

Annotation:—*Distd.* *R. v. Knox* (1863), 32 L. J. M. C. 257.

230. Submission of objections to validity of rate—To decision of justices.]—*R. v. KNOX*, No. 181, *ante*.

In county court.]—*See* COUNTY COURTS, Vol. XIII., pp. 550, 551.

See, generally, PRACTICE & PROCEDURE.

SECT. 11.—HOW OBJECTED TO.

SUB-SECT. 1.—IN GENERAL.

231. General rule.]—Objections on the ground of defect of jurisdiction may be founded on the character & constitution of the inferior ct., the nature of the subject-matter of the inquiry, or the absence of some preliminary proceeding which was necessary to give jurisdiction to the inferior ct.

The objection of defect of jurisdiction cannot be entertained if it rests solely on the ground that the judge has erroneously found a fact which was essential to the validity of his order, but which he was competent to try.—*COLONIAL BANK OF AUSTRALASIA v. WILLAN* (1874), L. R. 5 P. C. 417; 43 L. J. P. C. 39; 30 L. T. 237; 22 W. R. 516, P. C. *Annotations*:—*Refd.* *R. v. Woodhouse*, [1906] 2 K. B. 501. *Mentd.* *R. v. Bloomsbury Income Tax Comrs.*, [1915] 3 K. R. 768; *R. v. Nat Bell Liquors*, [1922] 2 A. C. 128.

SUB-SECT. 2.—STAY.

See, generally, PRACTICE & PROCEDURE.

When granted—Palatine Court of Lancaster.]—*See* Nos. 991, 993, 994, 1011, 1012, 1014, *post*.

Under Arbitration Act, 1889 (c. 49), s. 4.]—*See* ARBITRATION, Vol. II., pp. 361 *et seq.*

County courts.]—*See* COUNTY COURTS, Vol. XIII., pp. 494, 495.

232. — Proper remedy exercise of statutory right of appeal to special tribunal—Not before delivery of statement of claim.]—A motion to stay an action on the grounds that pltf.'s proper remedy is the exercise of a statutory right of appeal to the Local Government Board, & that the action is statute barred, is premature if made before the delivery of the statement of claim.—*WRIGHT*

v. PRESCOT URBAN COUNCIL (1916), 86 L. J. Ch. 221; 115 L. T. 772; 81 J. P. 43; 33 T. L. R. 82; 15 L. G. R. 41.

SUB-SECT. 3.—PLEA.

A. Requirements in Superior Courts.

233. Must show jurisdiction in another court.]—The plea was to the jurisdiction without averring to what ct. the jurisdiction belonged; & the rule of law is that, in a plea to jurisdiction, like a plea in abatement, where it is to a ct. of general jurisdiction, you must also show where the jurisdiction vests as well as negatively that it is not there; but if it is in an inferior ct. you need only plead thereto & not show where it is (*LORD HARDWICKE, C.*).—*SODOR & MAN (BP.) v. DERBY (EARL), DERBY (EARL) v. ATHOL (DUKE)* (1751), 2 Ves. Sen. 337; Dick 129; 28 E. R. 217, L. C.

Annotations:—*Refd.* *R. v. Johnson* (1805), 6 East, 583; *Companhia de Mocambique v. British South Africa Co., De Sousa v. British South Africa Co.*, [1892] 2 Q. B. 358. *Mentd.* *Doe d. Simpson v. Simpson* (1839), 4 Bing. N. C. 333; *Re Crawford* (1849), 13 Q. B. 613; *Ex p. Brown* (1864), 5 B. & S. 280; *A.-G. for Isle of Man v. Mylchreest* (1879), 4 App. Cas. 294; *Pemberton v. Barnes*, [1899] 1 Ch. 544.

234. — — —]—*MOSTYN v. FABRIGAS*, No. 28, *ante*.

235. — — —]—A plea to jurisdiction must show another. A plea to jurisdiction of all cts. is absurd because same is as plea in bar.—*CARNATIC (NABOB OF) v. EAST INDIA CO.* (1791), 1 Ves. 371; 30 E. R. 391; *sub nom.* *ARCOT (NABOB OF) v. EAST INDIA CO.*, 3 Bro. C. C. 292, L. C.; *subsequent proceedings, sub nom.* *CARNATIC (NABOB OF) v. EAST INDIA CO.* (1793), 2 Ves. 56.

Annotations:—*Refd.* *Musgrave v. Pulido* (1879), 5 App. Cas. 102; *Companhia de Mocambique v. British South Africa Co., De Sousa v. British South Africa Co.*, [1892] 2 Q. B. 358. *Mentd.* *Wood v. Strickland* (1813), 2 Ves. & B. 150; *Jackson v. Rowe* (1829), 4 Russ. 514; *King of Two Sicilies v. Peninsular & Oriental Steam Packet Co.* (1850), 19 L. J. Ch. 202; *De Haber v. Portugal Queen* (1851), 20 L. J. Q. B. 488; *King of Two Sicilies v. Wilcox* (1851), 1 Sim. N. S. 391; *Doss v. Secretary of State for India in Council* (1875), L. R. 19 Eq. 509; *West Rand Central Gold Mining Co. v. R.*, [1905] 2 K. B. 391.

236. — — —]—Every plea to the jurisdiction of the ct. ought to give some other ct. by which the matter may be tried.—*R. v. JOHNSON* (1805), 6 East, 583; 2 Smith, K. B. 591; 29 State Tr. 81; 102 E. R. 1412.

Annotations:—*Refd.* *London Corp'n. v. Cox* (1867), L. R. 2 H. L. 239; *Companhia de Mocambique v. British South Africa Co., De Sousa v. British South Africa Co.*, [1892] 2 Q. B. 358. *Mentd.* *Pooneshkhoty Moodelliar v. R.* (1835), 3 Knapp, 348; *R. v. O'Connell* (1844), 5 State Tr. N. S. 1; *R. v. Meany* (1867), 10 Cox, C. C. 506.

237. — — —]—A plea to an indictment for a misdemeanour by a native of Arcot, resident within the dominions of the Peishwa, to the jurisdiction of the recorder's ct. of Bombay was overruled on the ground that it amounted to a plea of the general issue, no other ct. of competent jurisdiction being stated for the trial of the offence.—*POONEESHKOTY MOODELLIAR v. R.* (1835), 3 Knapp, 348; 12 E. R. 684, P. C.

238. — — —]—*SPOONER v. JUDDOW*, No. 391, *post*.

239. — — —]—*LONDON CORPN. v. COX*, No. 23, *ante*.

240. — — —]—*BOARD v. BOARD*, No. 30, *ante*.

240a. Must be precise.]—*FOSTER v. BARRINGTON* (1659), 2 Sid. 164; 82 E. R. 1313.

See, generally, PLEADING.

M. M. Cas. 254.—CAN.

PART IV. SECT. 11, SUB-SECT. 2.

1. When granted—In case of concurrent jurisdiction.]—Where the jurisdiction of an inferior ct. is concurrent with that of a superior ct., the jurisdiction of the lower ct. is not ousted by the mere fact that an action was begun in the higher ct. by the same

parties respecting the same subject-matter before it was begun in the lower ct., & if objection is taken, the proper course is to apply to stay one of the actions, & it depends upon circumstances which one will be stayed.—*BROWN v. SPRUCE CREEK POWER CO., LTD.* (1905), 11 B. C. R. 243; 2

PART IV. SECT. 11, SUB-SECT. 3.—A. Plea must be in abatement or bar.]—To oust the ct. of jurisdiction, the objection must be pleaded in abatement or bar.—*DRIVAR v. WHITE* (1824), Rowe 189.—IR.

Sect. 11.—How objected to: Sub-sect. 3, B.; sub-sects. 4, 5 & 6. Sects. 12, 13 & 14.]

B. Requirements in Inferior Courts.

In Salford Hundred Court.]—See No. 1112, post. See, generally, PLEADING.

SUB-SECT. 4.—PROHIBITION.

See, generally, CROWN PRACTICE, pp. 372 et seq., post.

To county courts.]—See COUNTY COURTS, Vol. XIII., pp. 546 et seq.

To Mayor's Court, London.]—See MAYOR'S COURT, LONDON.

SUB-SECT. 5.—CERTIORARI.

See, generally, CROWN PRACTICE, pp. 398 et seq., post.

To county courts.]—See COUNTY COURTS, Vol. XIII., pp. 543 et seq.

SUB-SECT. 6.—APPEAL.

241. When appeal lies.]—Judgment in *assumpsit* in an inferior ct. reversed, because the matter pleaded was not triable there.—*DELBRIDGE v. FAME* (1673), 1 Freem. K. B. 319; 89 E. R. 236.

242. — Remedy by prohibition available.]—By County Ct. Rules, 1875, Ord. 8, r. 7, the summons in an action brought to recover lands should be delivered to the bailiff forty clear days at least before the return day, & should be served thirty-five clear days before the return day thereof. Pltff. in an action in the county ct. to recover lands delivered the summons to the bailiff thirty-nine clear days, & the bailiff served it upon deft. thirty-eight clear days, before the return day. At the hearing the county ct. judge ruled that the service was good, & tried the case, giving judgment for pltff. :—*Held*: deft.'s proper remedy was to appeal from the judge's ruling, & not to apply for a prohibition against the issue of execution on the judgment.

As to deft.'s remedy by prohibition, I do not think it necessarily follows that an appeal will not lie because there is a remedy by prohibition. There is a passage in Comyn's Digest (title Prohibition, bk. 7, D. p. 140), which, though perhaps it does not apply to every case, tends to show that there may be an appeal even although prohibition will lie, & it would also appear, from the same authority, that the appeal takes precedence of the remedy by prohibition (*GROVE, J.*).—*BARKER v.*

PALMER (1881), 8 Q. B. D. 9; 51 L. J. Q. B. 110; 45 L. T. 480; 30 W. R. 59, D. C.

Annotations:—*Reid, Jones' Trustees v. Gittins* (1884), 51 L. T. 599; *Sweetland v. Turkish Cigarette Co.* (1899), 80 L. T. 472; *Smythe v. Wiles*, [1921] 2 K. B. 66; *Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169.

243. — Appeal treated as motion for prohibition.]—Upon an appeal from an order of committal against a married woman under Debtors Act, 1869 (c. 62), s. 5, the preliminary objection was taken that no appeal would lie against the order, & that deft.'s remedy was by moving for a prohibition :—*Held*: in one form or the other the ct. had jurisdiction to hear the matter & if necessary, they would treat it as though before them on motion for a prohibition.

The only result of giving effect to the objection would be that another application, namely for a prohibition, could be made to this ct. In order, therefore, to save expense to the parties, & to have the real question determined at once, this ct. will mould the motion into the form of a rule for a writ of prohibition (*MATHEW, J.*).—*DRAYCOTT v. HARRISON* (1886), 17 Q. B. D. 147; *sub nom. DARRACOTT v. HARRISON*, 34 W. R. 546, D. C.

Annotations:—*Consd. Hood Barrs v. Cathcart*, [1894] 2 Q. B. 559. *Mentd. Scott v. Morley* (1887), 20 Q. B. D. 120; *Hood-Barrs v. Cathcart* (No. 3) (1894), 42 W. R. 633; *Re Lumley, Ex p. Hood Barrs*, [1894] 3 Ch. 135.

244. — Where an order has been made in circumstances that would give the Div. Ct. jurisdiction to issue a prohibition, the party aggrieved is not thereby deprived of his right to appeal against such an order to the Div. Ct. in the ordinary way instead of applying for a prohibition.—*SWEETLAND v. TURKISH CIGARETTE CO.* (1899), 80 L. T. 472; 47 W. R. 511; 43 Sol. Jo. 417, D. C.

Annotations:—*Reid. Smythe v. Wiles*, [1921], 2 K. B. 66; *Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169.

To High Court of Justice.]—See Part XI., Sect. 2, sub-sect. 1, B. (b), post.

To Court of Appeal.]—See Part XI., Sect. 3, sub-sect. 2, B. (a), iv., post.

SECT. 12.—EFFECT OF WANT OF.

245. Inferior court—Proceedings void.]—ANON. (1847), Sty. 45; 82 E. R. 517.

246. — Proceedings not showing jurisdiction.]—In the case of inferior jurisdictions unless sufficient appears on the face of the proceedings themselves to show that the jurisdiction exists, such proceedings are altogether void.—*TAYLOR v. CLEMSON* (1842), 2 Q. B. 978; 2 Gal. & Dav. 346; 3 Ry. & Can. Cas. 65; 11 L. J. Ex. 447; 114 E. R. 378, Ex. Ch.; *affd.* (1844), 11 Cl. & Fin. 610, H. L.

Annotations:—*Mentd. Ostler v. Cooke* (1849), 13 Q. B. 143; *Sparrow v. Oxford, etc., Ry.* (1852), 2 De G. M. & G. 94.

242 vii. — — — — —.]—KILMINSTER v. MONAGHAN (1902), 21 N. Z. L. R. 522. —N.Z.

PART IV. SECT. 12.

245 i. Inferior court—Proceedings void.]—Re MCGUGAN v. MCGUGAN (1892), 21 S. C. R. 267.—CAN.

246 i. — Proceedings not showing jurisdiction.]—Where the absence of jurisdiction is apparent on the face of an order, all proceedings under it are *coram non jure*, & there is no right of appeal.—*TESKEY v. NEIL* (1893), 15 P. R. 244.—CAN.

n. — Proceedings set aside.]—Acts done without jurisdiction are acts of no legal effect at all, & must be set aside.—*GOOROO PERAID ROY v. JUGOORUNDO MEZOOMDAR* (1862), 1 Hay 153.—IND.

PART IV. SECT. 11, SUB-SECT. 6.

241 i. When appeal lies.]—An order made by a ct. of competent jurisdiction which has authority to decide as to its own competency must be taken to be a decision by the ct. that it has jurisdiction to make the order, & the proper way to get rid of it, if it is erroneous, is to appeal against it.—*RITZ v. FROESE* (1898), 12 Man. L. R. 346.—CAN.

242 i. — Remedy by prohibition available.]—The judge of the county court mentioned in s. 137 of Municipal Clauses Act is *persona designata*, & the authority conferred upon him by said section may not be exercised by the judge of another county court. The remedy of an aggrieved party where jurisdiction is exceeded is by application for prohibition, & not by

way of appeal.—*SLOCAN v. CANADIAN PACIFIC RY. CO.* (1908), 14 B. C. R. 112; 9 W. L. R. 583.—CAN.

242 ii. — — — — —.]—R. v. NEVISON, [1919] 1 W. W. R. 793; 45 D. L. L. 382; 31 Can. Crim. Cas. 111.—CAN.

242 iii. — — — — —.]—Re PETRIE MANUFACTURING CO. v. WRIGHT, [1920] 48 O. L. R. 481; 57 D. L. R. 562; 19 O. W. N. 298.—CAN.

242 iv. — — — — —.]—LUTEEFOON-NISSA BEEBEE v. POOLIN BEHARY SEIN (1862), 1 Hay. 242; 1 Ind. Jur. O. S. 10.—IND.

242 v. — — — — —.]—GROVES v. SOMERVILLE (1877), 2 J. R. N. S. 1.—N.Z.

242 vi. — — — — —.]—GORMLEY v. MCINTYRE (1893), 12 N. Z. L. R. 36.—N.Z.

247. — Decision void.]—*DRAKE v. BEERE* (1863), 1 Sid. 151; 1 Lev. 104; 1 Keb. 555; 82 E. R. 1026.

Annotation :—*Distd. Clark v. Denton* (1830), 1 B. & Ad. 92.

248. — —.]—Where a tribunal determines in a matter not within its jurisdiction, the decision is a nullity.—*A.-G. v. HOTHAM (LORD)* (1827), 3 Russ. 415; 38 E. R. 631, L. C.

Annotations :—*Mentd. A.-G. v. Hungerford* (1834), 8 Bl. N. S. 437; *A.-G. v. Webster* (1875), L. R. 20 Eq. 483; *Re St. Botolph Without Bishopsgate Parish Estates* (1887), 35 Ch. D. 142; *Re St. Stephen, Colman Street, Re St. Mary the Virgin, Aldermanbury* (1888), 39 Ch. D. 492; *Haigh v. West*, [1893] 2 Q. B. 19.

Judgment reversed.]—*See* No. 241, *ante*.

249. — Party wrongly sued may bring action.]—Case lies for suing in a ct. which has no jurisdiction.—*TEMPLE v. KILLINGWORTH* (1691), 12 Mod. Rep. 4; *Carth.* 189; 1 Show. 251; 88 E. R. 1127.

250. — Liability of officer executing process.]—A judgment vacated, yet the officer is excused for executing the writ, but not the party.—*TURNER v. FELGATE* (1663), 1 Lev. 95; 1 Keb. 478; *T. Raym.* 73; 83 E. R. 315.

Annotations :—*Consd. Garland v. Carlisle* (1837), 11 Bl. 421. *Refd. Britton v. Cole* (1697), 12 Mod. Rep. 175; *Moravia v. Sloper* (1737), *Willes*, 30; *Perkin v. Proctor* (1768), 2 Wils. 382; *Parsons v. Loyd* (1772), 3 Wils. 341; *Barker v. Braham* (1773), 3 Wils. 368; *Doe d. Emmett v. Thorn* (1813), 1 M. & S. 425; *Balme v. Hutton* (1833), 9 Bing. 471; *Gosset v. Howard* (1845), 10 Q. B. 411. *Mentd. Baily v. Bunning* (1666), 2 Keb. 32; *Prigg v. Adams* (1699), 2 Salk. 674; *Cameron v. Lightfoot* (1777), 2 Wm. Bl. 1190.

251. — —.]—*HIGGINSON v. MARTIN & HADLEY*, No. 154, *ante*.

252. — —.]—*LONDON CORPN. v. COX*, No. 23, *ante*.

Whether jurisdiction must be shown.]—*See* Sect. 6, sub-sect. 2, D., *ante*.

Liability of judge or officer executing process.]—*See* PUBLIC AUTHORITIES & PUBLIC OFFICERS.

County court—Liability of judge or officer.]—*See* COUNTY COURTS, Vol. XIII., pp. 451 *et seq.*

Effect of consent or waiver.]—*See* Sect. 10, *ante*.

See, also, EXECUTION; SHERIFFS & BAILIFFS.

SECT. 13.—HOW LOST OR TAKEN AWAY.

253. Not by non-user.]—The charter of 20 Car. 2, granted that the mayor & jurats of every one of the Cinque Ports or ancient towns might have & hold in each Cinque Port or ancient town a ct. of record for determining suits concerning all manner of debts, accounts, covenants, contracts, etc., arising within their respective limits. A rule *nisi* having been obtained for a mandamus to defts. to hold a ct. of record for those purposes:—*Held*: although no such ct. had been held since 1790, the rule must be made absolute.—*R. v. HASTINGS CORPN.* (1822), 5 B. & Ald. 692, n.; 1 Dow. & Ry. K. B. 148; 1 Dow. & Ry. M. C. 53; 106 E. R. 1344, n.

Annotations :—*Refd. R. v. Havering Atte Bower* (1822), 5 B. & Ald. 691. *Mentd. R. v. Eye Corpn.* (1822), 2 Dow. & Ry. K. B. 172; *Bolton v. Crowther* (1824), 4 Dow. & Ry. K. B. 195; *R. v. Great Southern & Western Ry.* (1847), 9 L. T. O. S. 375.

254. — —.]—By charter the King granted that the steward & suitors of a manor should have power to hold a ct. for the determination of civil

suits, & there had been a non-user of the court for fifty years except for the purpose of levying fines & suffering recoveries:—*Held*: this ct. being for the public benefit, the words of permission in the charter were obligatory, & the right of determining suits was not lost by the non-user.—*R. v. HAVERING ATTE BOWER (STEWART)* (1822), 5 B. & Ald. 691; 2 Dow. & Ry. K. B. 176, n.; 1 Dow. & Ry. M. C. 205, n.; 106 E. R. 1343.

Annotations :—*Refd. R. v. Eye Corpn.* (1822), 1 B. & C. 85; *A.-G. of Isle of Man v. Cowley* (1859), 12 Moo. P. C. C. 27; *Julius v. Oxford Bp.* (1880), 5 App. Cas. 214. *Mentd. R. v. Turner* (1897), 66 L. J. Q. B. 417.

255. — —.]—Where a charter is granted to a corpn. to hold a ct. for the trial of causes, the disuse of that ct. for two hundred years & the want of funds to hold it are no answer to a rule for a mandamus commanding them to hold it.—*R. v. WELLS CORPN.* (1836), 4 Dowl. 562; 1 Har. & W. 666.

256. — —.]—Where a ct. lawfully possesses a jurisdiction for the benefit of the subject in the administration of justice, mere non-user does not take it away.—*A.-G. OF ISLE OF MAN v. COWLEY* (1859), 12 Moo. P. C. C. 27; 7 W. R. 713; 14 E. R. 821, P. C.

By ouster.]—*See* Sect. 9, *ante*.

SECT. 14.—OF PARTICULAR COURTS.

Admiralty courts.]—*See* ADMIRALTY, Vol. I., pp. 99 *et seq.*

Bankruptcy courts.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 35 *et seq.*

Borough & local courts of record.]—*See* Part XXIII., *post*.

Colonial courts.]—*See* DEPENDENCIES, COLONIES & BRITISH POSSESSIONS.

Commissioners of Sewers.]—*See* Part XXV., Sect. 4, *post*.

Comptroller-General of Patents.]—*See* PATENTS & INVENTIONS.

Consular courts.]—*See* Part XVI., *post*.

Coroners' courts.]—*See* CORONERS, Vol. XIII., pp. 241 *et seq.*

County courts.]—*See* COUNTY COURTS, Vol. XIII., pp. 156 *et seq.*

Courts having jurisdiction in lunacy.]—*See* Part XIII., *post*; LUNATICS & PERSONS OF UNSOUND MIND.

Courts held by sheriff.]—*See* SHERIFFS & BAILIFFS.

Courts-martial.]—*See* ROYAL FORCES.

Courts of Chivalry.]—*See* Part XVIII., *post*.

Courts of the Cinque Ports.]—*See* Part XXII., *post*.

Courts of criminal jurisdiction.]—*See* CRIMINAL LAW & PROCEDURE; INFANTS & CHILDREN; MAGISTRATES.

Court of Lord High Steward.]—*See* Part IX., *post*.

Courts under Merchant Shipping Acts.]—*See* SHIPPING & NAVIGATION.

Courts of referees.]—*See* WORK & LABOUR.

Ecclesiastical courts.]—*See* ECCLESIASTICAL LAW.

Forest courts.]—*See* Part XVII., *post*.

Gas examiners.]—*See* METROPOLIS.

High Court of Parliament.]—*See* PARLIAMENT.

House of Commons.]—*See* PARLIAMENT.

247 i. — Decision void.]—An order made without jurisdiction is a nullity.—*WINNIFEG v. BROCK* (1910), 16 W. L. R. 45.—*CAN.*

247 ii. — —.]—*MAINGAY v. GAHAN* (1794), *Ridg. L. & S.* 70.—*IR.*

247 iii. — —.]—*THOMPSON v. SHIEL* (1840), 3 I. Eq. R. 135.—*IR.*

PART IV. SECT. 13.

o. By final judgment.]—When once an inferior ct. has passed a final

decision between the parties, it loses jurisdiction over the suit, except for the purposes of executing the decree.—*LULEST MOHUN ROY CHOWDHRY v. SOWTRA BEEBER* (1868), 10 W. R. 42.—*IND.*

Sect. 14.—Of particular courts. Parts V. & VI.]**House of Lords.]—See PARLIAMENT.****Income Tax Commissioners.]—See INCOME TAX.****Industrial courts.]—See Industrial Courts Act, 1919 (c. 69); TRADE & TRADE UNIONS.****Judicial Committee of Privy Council.]—See Part X., *post*.****Juvenile courts.]—See INFANTS & CHILDREN.****Land Tax Commissioners.]—See LAND TAX.****Law officers.]—See CONSTITUTIONAL LAW, Vol. XI., pp. 511 *et seq.*; PATENTS & INVENTIONS.****Licensing authority.]—See INTOXICATING LIQUORS.****Local Government Board inquiries.]—See LOCAL GOVERNMENT.****Manorial courts.]—See COPYHOLDS, Vol. XIII., pp. 32 *et seq.*****Maritime courts.]—See ADMIRALTY, Vol. I., pp. 99 *et seq.*; MAGISTRATES; PRIZE LAW & JURISDICTION; SHIPPING & NAVIGATION.****Mayor's Court, London.]—See MAYOR'S COURT, LONDON.****Palatine Courts.]—See Part XXI., *post*.****Prize Courts.]—See PRIZE LAW & JURISDICTION.****Railway & Canal Commission.]—See RAILWAYS & CANALS.****Registration courts.]—See ELECTIONS.****Trade Board.]—See TRADE & TRADE UNIONS.****Supreme Court of Judicature.]—See Part XI., *post*.****Tribunal of appeal under London Building Acts.]—See METROPOLIS.**

Part V.—Appointment of Judges and Officers.

257. Right of Crown to appoint officers.]—Upon the first question I am of opinion that the right to appoint to all the offices connected with the administration of justice is vested in the Crown by the royal prerogative; & if the Crown by its royal prerogative constitutes a new ct. of justice, it may appoint the judges of the ct., & all the subordinate officers, upon such terms as it shall think proper. So, also, if the Crown, by virtue of an Act of Parliament, is authorised to constitute a ct., it may appoint the judges of that ct., & also the officers, in such manner as it may deem most expedient to carry into effect the object of the Legislature. But if, in the constitution of a ct. formed under the authority of Parliament, the Crown appoints the judges, but does not appoint the officers of the ct., but is silent as to the appointment of any officer, then I apprehend, as a matter of law, the power of appointing the officers belongs to the ct. itself, or to some member or members of the ct. to whom particular duties are assigned, & who, in the discharge of those duties, must commit the performance of the minor part of those duties to some subordinate officer or clerk. If the Crown has once waived the right of appointing the

officers, & has suffered either the judges of the ct. at large, or some particular judge to whom special powers are confided, to appoint the officers necessary to conduct the subordinate business of the ct., then, I apprehend, the Crown cannot afterwards interfere, & take from the ct., or particular members, the appointment of the subordinate officers (LITLEDAL, J.).—*HARDING v. POLLOCK* (1829), 6 Bing. 25; 3 Bli. N. S. 161; 1 Dow. & Cl. 453; 2 State Tr. N. S. 341; 130 E. R. 1189, II. L.

Annotation :—*Mentd.* *Maule v. White*, *Maule v. Herbert*, *Maule v. Green* (1895), 60 J. P. 567.

—*See, generally, CONSTITUTIONAL LAW, Vol. XI., p. 515, Nos. 165–167.*

258. Of inferior courts.]—If the judge of an inferior ct. is not an utter barrister of three years standing, proceedings shall be stayed upon the delivery of *habeas corpus*, notwithstanding issue is joined within the time limited by 21 Jac. I. c. 23.—*CLAPHAM'S CASE* (1627), Cro. Car. 79; 79 E. R. 669.

Of county courts.]—See COUNTY COURTS, Vol. XIII., pp. 448 *et seq.*

Examiners.]—See EVIDENCE.

Part VI.—Right of Public to Admission.

259. General rule.]—Proceedings against a party in a summary manner under 5 Ann. c. 14, for keeping & using a gun to destroy game, are of a judicial nature, at which all persons have a *prima facie* right to be present.

A magistrate had, without any specific reason, caused a party, who claimed a right to be present, to be removed from a justice-room, where such proceedings were going on:—*Held*: he was liable to an action of trespass.—*DAUBNEY v. COOPER* (1829), 10 B. & C. 237; 5 Man. & Ry. K. B. 314; 3 Man. & Ry. M. C. 23; 8 L. J. O. S. K. B. 21; 109 E. R. 438; *subsequent proceedings* (1830), 10 B. & C. 830.

Annotations :—*Expld.* *Collier v. Hicks* (1831), 9 L. J. O. S. M. C. 138. *Refd.* *R. v. York* (1832), 1 L. J. K. B. 211; *Newton v. Constable* (1841), 6 Jur. 317. *Mentd.* *Rawlings v. Till* (1837), 7 L. J. Ex. 6.

260. —.]—The Ct. for Divorce & Matri-

monial Causes has no power to exclude the public during the hearing of a cause.

If the question had arisen now for the first time, I should have thought, as this is a new ct., & the Act by which it was constituted does not exempt it from the rules applicable to cts. generally, that it must be considered to have all the incidents of an ordinary ct. of justice, one of which is, that its proceedings must take place in public (WILLIAMS, J.).—*H—* (falsely called C—) *v. C—* (1859), 1 Sw. & Tr. 805; 29 L. J. P. & M. 29; 1 L. T. 489; 164 E. R. 880; *sub nom.* *HALL* (falsely called *CASTLEDEN*) *v. CASTLEDEN*, Sea. & Sm. 29; *on appeal, sub nom.* *CASTLEDEN v. CASTLEDEN* (1861), 9 H. L. Cas. 186, H. L.

Annotations :—*Consd.* *Scott v. Scott*, [1913] A. C. 417. *Refd.* *Andrew v. Raeburn* (1874), 31 L. T. 73; *A. v. A.* (1875), L. R. 3 P. & D. 230; *Willis v. MacLachlan* (1876), 1 Ex. D. 376. *Mentd.* *Serrell v. Serrell & Bamford* (1862), 31 L. J. P. M. & A. 55; *Cavell v. Prince* (1866), L. R. 1 Exch.

PART V.

p. Master.]—The appointment of a new master under rules, made by the

judges, operates as a rescission of any former appointment, it being unnecessary to rescind such appointment

by express writing.—*JARDINE v. BULLEN*, ESQUIMAULT ELECTION CASE (1898), 7 B. C. R. 471.—*CAN.*

246; *T. v. D.* (falsely called *D.*) (1866), L. R. 1 P. & D. 127; *Reynolds v. Reynolds* (1876), 45 L. J. P. 89; *G. v. M.* (1885), 10 App. Cas. 171; *M.* (otherwise *D.*) *v. D.* (1885), 10 P. D. 75.

261. — Exclusion by consent — Whether consent of both parties required — Family disputes.]—Private hearings in cases of family disputes are granted on consent of both parties.—*Re PORTSMOUTH (LORD)* (1815), Coop. G. 106; 35 E. R. 495, L. C.

*Annotations:—**Reid. Andrew v. Raeburn* (1874), 31 L. T. 73; *Scott v. Scott*, [1913] A. C. 417.

262. — — — — —.]—The consent of both parties is not necessary to a private hearing.—*OGLE v. BRANDLING* (1831), 2 Russ. & M. 688; 39 E. R. 557, L. C.

*Annotations:—**Fold. Anon.* (1874), 30 L. T. 153. *Reid. Andrew v. Raeburn* (1874), 31 L. T. 73; *Re Martindale*, [1894] 3 Ch. 193.

263. — — — — —.]—The ct. will direct a case to be heard in private upon an assurance by counsel that in his opinion it is a proper case to be so heard, notwithstanding the objection of other parties.—*ANON.* (1874), 30 L. T. 153.

Validity of.]—*See* Nos. 269, 271, 273, 270, 278, *post*.

264. — Exclusion in interests of justice — Power to clear court to preserve quiet.]—The judge of Assize has authority to order the ct., or any part of it, to be cleared, if quiet is not preserved in it, & the sheriff is bound to execute his orders, & to preserve quiet.

English cts. of justice are open to the public in the fullest sense, & I trust they ever will remain so; but it was going far beyond either law or necessity to avow that there is no power reposed in the presiding judge to order such modifications of the arrangements of the ct. as are indispensable to that which it is the office of a judge to carry out, namely, the efficient administration of justice. It is undoubtedly in the power of the judge, in his discretion, to order the ct., or any part of it, to be cleared if due quiet is not preserved (*COCKBURN, C.J.*).—*Re SURREY (SHERIFF)* (1860), 2 F. & F. 234.

265. — — — — —.]—A British subject was charged with having on Apr. 24, 1916, taken part in an armed rebellion & in the waging of war against the King, such act being of such a nature as to be calculated to be prejudicial to the defence of the realm, & being done with the intention & for the purpose of assisting the enemy. On May 5, 1916, he was tried before a field general ct.-martial convened in Dublin & was convicted. By Rules of Procedure, 1907, r. 119 (c), made under the powers contained in Army Act, 1881 (c. 58), it was provided that the proceedings should be held in open ct., in the presence of the accused, except on any deliberation among the members, when the ct. might be closed:—*Held*: the words "open ct." meant a ct. to which the public had a right to be admitted, but they did not include a ct. where the public were excluded, although the accused & his representatives were allowed to be present.

There is inherent jurisdiction in every ct., including a field general ct.-martial, to exclude the public from a trial if it is necessary for the administration of justice.—*R. v. LEWES PRISON (GOVERNOR), Ex p. DOYLE*, [1917] 2 K. B. 254; 86 L. J. K. B. 1514; 116 L. T. 407; 81 J. P. 173; 33 T. L. R. 222; 25 Cox, C. C. 635.

In matrimonial causes.]—*See* Nos. 275–277, *post*.

266. — Exclusion in interests of public decency or morality.]—Circumstances in which an action by a schoolmaster to recover damages for defamation was tried *in camera* with the consent

of the parties.—*MALAN v. YOUNG* (1889), 53 J. P. 822; 6 T. L. R. 38.

*Annotations:—**Expld. Scott v. Scott*, [1913] A. C. 417. *Reid. Re Martindale*, [1894] 3 Ch. 193. The hearing in private wholly or in part of cases in which public decency & morality require it to be done are also familiar, not only in the divorce cts., but also in the ordinary criminal & civil cts., an instance of the latter being *Malan v. Young* (NORTH, J.).—*Druce v. Druce*, *Druce v. Druce & Gibb* (1903), 72 L. J. P. 51.

In matrimonial causes.]—*See* Nos. 275–277, *post*.

267. To court of summary jurisdiction — Proceedings under 5 Ann., c. 14—Trespass for removal.]—*DAUBNEY v. COOPER*, No. 259, *ante*.

268. — Summons under Defence of the Realm Regulations—For destruction of documents.]—N. was summoned with several other persons under Defence of the Realm Regulations, Consolidated (July, 1915), reg. 51A, to show cause why certain printed publications of which he was the owner, & which were prohibited by reg. 27, should not be destroyed or otherwise disposed of. The proceedings were held *in camera*, & an order was made for the destruction of the documents. N. applied for a rule *nisi* for a writ of *certiorari* to bring up the order for the purpose of having it quashed, on the grounds: (a) that the provision in reg. 51A for the hearing of proceedings *in camera* was *ultra vires*, & (b) that the order was bad, as it did not specify the exact breach of the regulations committed by N. nor the exact publications in respect of which it had been committed:—*Held*: (1) reg. 51A, in providing for the hearing of proceedings *in camera* was *intra vires*, & in view of the object of the Defence of the Realm Acts & the regulations made thereunder, reasonable; (2) the order was good; (3) the rule must be refused.—*Ex p. NORMAN* (1915), 85 L. J. K. B. 203; 111 L. T. 232; 80 J. P. 156; 60 Sol. Jo. 90; 25 Cox, C. C. 263.

269. In matrimonial causes.]—The Judge Ordinary has no power, even with the consent of the parties, to exclude the public from ct. during the hearing of a cause.—*BARNETT v. BARNETT* (1859), Sea. & Sm. 20; 29 L. J. P. & M. 28.

*Annotations:—**Fold. H.* (falsely called *C.*) *v. C.* (1859), 29 L. J. P. & M. 29. *Consd. Scott v. Scott*, [1913] A. C. 417. *Reid. Andrew v. Raeburn* (1874), 31 L. T. 73.

270. — — — — —.]—*H.* — (FALSELY CALLED *C.*) — *v. C.* —, No. 260, *ante*.

271. — — — — —.]—The ct. is not bound by the practice of the ecclesiastical cts. in suits for dissolution of marriage, & in such suits it has no power, even with the consent of all parties, to order the cause to be heard *in camera*.—*C. v. C.* (1869), L. R. 1 P. & D. 610; 38 L. J. P. & M. 37; 20 L. T. 280.

*Annotations:—**Consd. A. v. A.* (1875), L. R. 3 P. & D. 230; *Scott v. Scott*, [1913] A. C. 417.

272. — — — — —.]—In every matrimonial suit, which before the passing of Matrimonial Causes Act, 1857 (c. 85), might have been determined in an ecclesiastical ct., the Judge Ordinary may, if he considers the circumstances of the case to require it, direct that the hearing shall take place in private.—*A. v. A.* (1875), L. R. 3 P. & D. 230; 11 L. J. P. & M. 15; 23 W. R. 386; *sub nom. ANSTEX v. ANSTEX*, 31 L. T. 801.

*Annotation:—**Consd. Scott v. Scott*, [1913] A. C. 417.

273. — — — — —.]—*Semble*: the High Ct. of Justice has no power to hear cases in private, even with the consent of the parties, except cases affecting lunatics or wards of ct., or where a public trial would defeat the object of an action, or in those cases where the practice of the old ecclesiastical cts. as to hearing *in camera* is continued.—*NAGLE-GILLMAN v. CHRISTOPHER* (1876), 4 Ch. D. 173; 46 L. J. Ch. 60.

*Annotations:—**Consd. Scott v. Scott*, [1913] A. C. 417. *Reid. Malan v. Young* (1889), 6 T. L. R. 38.

274. — Public requested to retire.]—COHEN v. COHEN (1897), 13 T. L. R. 255.

275. —]—The ct. possesses inherent jurisdiction to order any case to be heard *in camera*.

A suit for judicial separation was instituted by a wife, the particulars in which disclosed allegations of filthy practices, but in which no suggestion was made of sodomy or bestiality. With the wife's suit had been consolidated a suit by the husband for dissolution of the marriage on the ground of the wife's adultery with the co-resp.:—*Held*: with the consent of all the parties, the case should be heard *in camera* by a judge sitting with a special jury.—D. v. D., D. v. D. & G., [1903] P. 144; *sub nom.* DRUCE v. DRUCE, DRUCE v. DRUCE & GIBB, 72 L. J. P. 51; 88 L. T. 573; 19 T. L. R. 387; 47 Sol. Jo. 119.

Annotation:—*Consd.* Scott v. Scott, [1913] A. C. 417.

276. —]—The Probate, Divorce & Admty. Div. has no power, either with or without the consent of the parties, to hear a nullity suit or other matrimonial suit *in camera* in the interest of public decency.

The general rule as to publicity must yield to the paramount duty of the ct. to secure that justice is done; & it is open to a party in a matrimonial suit, upon proof that justice cannot be done otherwise, to apply for a hearing *in camera*, & even for the prohibition of subsequent publication of the proceedings, in exceptional cases (LORD HALDANE, C.).

In cases where it is shown that the administration of justice would be rendered impracticable by the presence of the public, as for example where a party would be reasonably deterred by publicity from seeking relief at the hands of the ct., an order for hearing a matrimonial suit *in camera* may be lawfully made. Subject to the above limitations rules may be made under Matrimonial Causes Act, 1857 (c. 85), to regulate the hearing of causes *in camera* (LORD LOREBURN).—SCOTT v. SCOTT, [1913] A. C. 417; 82 L. J. P. 74; 109 L. T. 1; 29 T. L. R. 520; 57 Sol. Jo. 498, H. L.

Annotations:—*Consd.* Norman v. Mathews (1916), 85 L. J. K. B. 857. *Distd.* *Ex p.* Norman (1916), 25 Cox, C. C. 263. *Apld.* R. v. Lewes Prison Governor, *Ex p.* Doyle, [1917] 2 K. B. 254. *Refd.* Cleland v. Cleland, Cleland v. Cleland & McLeod (1913), 109 L. T. 744; Moosbrugger v. Moosbrugger, Moosbrugger v. Moosbrugger & Martin (1913), 29 T. L. R. 658; *Re* Stevenson, [1918-19] B. & C. R. 106. *Mentd.* R. v. Manchester Local Profiteering Committee, *Ex p.* L. & Y. Ry. (1920), 89 L. J. K. B. 1089.

277. —]—The ct., being satisfied that to hear evidence in open ct. would be against the interests of public morality & might prevent real justice being done, granted the application of a wife that the evidence in support of her petition should be taken *in camera*, the husband not opposing the application.—CLELAND v. CLELAND, CLELAND v. CLELAND & McLEOD (1913), 109 L. T. 744; 30 T. L. R. 169; 58 Sol. Jo. 221.

278. Where interests of wards of court or lunatics involved.]—(1) Except in cases in which wards of the ct. or lunatics are concerned, it is the general practice of the ct. not to hear causes *in camera* without the consent of both parties.

(2) *Qu.*: whether the ct. would not hear a cause *in camera* without the consent of one of the parties, if the whole object of the suit would be defeated by a public hearing.

A suit was commenced to restrain the publication of private letters:—*Held*: an interlocutory injunction must be granted, although *pltf.* did not fully prove his title to relief, on the ground that to refuse an injunction would be to determine the whole suit on an interlocutory application.—

ANDREW v. RAEBURN (1874), 9 Ch. App. 522; 31 L. T. 73; 22 W. R. 564, L. C. & L. JJ.

Annotations:—*As to* (1) *Refd.* Malan v. Young (1889), 6 T. L. R. 38; Scott v. Scott, [1912] P. 241. *As to* (2) *Consd.* Scott v. Scott, [1913] A. C. 417. *Refd.* Nagle-Gillman v. Christopher (1876), 4 Ch. D. 173; *Re* Martindale, [1894] 3 Ch. 193.

279. —]—NAGLE-GILLMAN v. CHRISTOPHER, No. 273, *ante*.

280. —]—The general rule is an excellent one, that legal proceedings should be in public, & if it were departed from the great weight which legal decisions carry with them in this country would be deservedly diminished. But to this rule certain exceptions are proper & necessary. Cases relating to lunatics are constantly heard in private & cases as to wards, in order that the lunatic or ward may not be prejudiced (NORTH, J.).—*Re* MARTINDALE, [1891] 3 Ch. 193; 64 L. J. Ch. 9; 71 L. T. 408; 43 W. R. 53; 10 T. L. R. 670; 8 R. 729.

Annotation:—*Consd.* Scott v. Scott, [1913] A. C. 417.

281. Where object of proceedings would be defeated—Suit to restrain publication—Of private letters.]—ANDREW v. RAEBURN, No. 278, *ante*.

282. — Of confidential information.]—On an appeal from an injunction to restrain *deflt.* from disclosing confidential information, *pltf.* stated that a public hearing would defeat the object of the action & make success on the appeal useless to him:—*Held*: the appeal should be heard in private without the consent of *deflt.*—MELLOR v. THOMPSON (1885), 31 Ch. D. 55; 55 L. J. Ch. 942; 54 L. T. 210, C. A.

Annotations:—*Consd.* Scott v. Scott, [1913] A. C. 417. *Refd.* Malan v. Young (1889), 6 T. L. R. 38; *Re* Martindale, [1894] 3 Ch. 193; *Weld-Blundell v.* Stephens, [1919] 1 K. B. 320.

283. —]—NAGLE-GILLMAN v. CHRISTOPHER, No. 273, *ante*.

284. — Summons under Defence of the Realm Regulations—For destruction of documents.]—*Ex p.* NORMAN, No. 268, *ante*.

285. To inquiry in examiner's room.]—*Re* WESTERN OF CANADA OIL, LANDS, & WORKS CO., No. 17, *ante*.

286. In patent cases involving secret process—Shorthand notes impounded.]—In an action to restrain the infringement of a patent for producing colouring matters for dyeing & printing by means of a chemical process:—*Held*: (1) *deflt.* might state his secret process *in camera*; (2) the shorthand writer's notes, which would disclose the secret process, must be impounded in ct.—BADISCHE ANILIN UND SODA FABRIK v. LEVINSTEIN (1883), 24 Ch. D. 156; 52 L. J. Ch. 704; 48 L. T. 822; 31 W. R. 913.

Annotations:—*As to* (1) *Refd.* Malan v. Young (1889), 6 T. L. R. 38; *Re* Martindale, [1894] 3 Ch. 193; Scott v. Scott, [1913] A. C. 417. *As to* (2) *Refd.* Malan v. Young (1889), 6 T. L. R. 38.

287. In county court—Application for dismissal of action.]—Upon an order made by a magistrate under Defence of the Realm Consolidation Act, 1911 (c. 8), the police entered certain premises & seized documents there. Among them were some which were claimed by a person who was not a party to the prosecution. Prior to an order for the destruction of the documents so seized he brought an action in the county ct. against the Director of Public Prosecutions & the Chief Comr. of Police in respect of the detention of his documents. A writ of *certiorari* to quash the order for destruction subsequently made having been refused, *defts.* in the action of *detinue* applied to the county ct. judge to have it dismissed as frivolous & vexatious. The application was heard *in camera*, & the judge dismissed the

action:—*Held*: (1) county cts. have an inherent, as well as a statutory, jurisdiction under County Cts. Act, 1888 (c. 43), s. 164, to stay or dismiss an action which is frivolous & vexatious; (2) county cts. have jurisdiction to hear *in camera*, an application for such delay or dismissal.—*NORMAN v. MATHEWS* (1916), 85 L. J. K. B. 857; 114 L. T. 1043; 32 T. L. R. 303; 80 J. P. Jo. 100, D. C.; *subsequent proceedings*, 80 J. P. Jo. 160, C. A.

288. To field general court-martial.—*R. v. LEWES PRISON (GOVERNOR), Ex p. DOYLE*, No. 265, *ante*.

To coroner's court.—*See* CORONERS, Vol. XIII., pp. 242, 243, Nos. 133–136.

In criminal proceedings.—*See* Nos. 259, 264, *ante*.

Prosecution for incest.—*See* Criminal Law Amendment Act, 1922 (c. 56), s. 5.

289. Meaning of "open court"—In Rules of Procedure, 1907—Made under Army Act, 1881 (c. 58).—*R. v. LEWES PRISON (GOVERNOR), Ex p. DOYLE*, No. 265, *ante*.

Part VII.—Classification of Courts.

SECT. 1.—SUPERIOR COURTS.

290. Court Palatine of Durham.—*PEACOCK v. BELL & KENDAL*, No. 26, *ante*.

291. Court of Assize.—A Ct. of Assize is a superior ct.—*Re FERNANDES* (1861), 6 H. & N. 717; 30 L. J. C. P. 322, n.; 4 L. T. 296; 25 J. P. 456; 7 Jur. N. S. 529; 9 W. R. 559; 158 E. R. 296.

292. S. P. Ex p. FERNANDEZ (1861), 10 C. B. N. S. 3; 30 L. J. C. P. 321; 4 L. T. 324; 7 Jur. N. S. 571; 9 W. R. 832; 142 E. R. 349.

Annotations:—*Consd. R. v. Central Criminal Court JJ.* (1883), 11 Q. B. D. 479. *Reid. Dale's Case, Enraght's Case* (1881), 6 Q. B. D. 376; *R. v. Maidenhead Corpn.* (1882), 8 Q. B. D. 339; *R. v. Parke* (1903), 89 L. T. 439. *Mentd. Re Davies* (1888), 21 Q. B. D. 236; *Gordan v. Gordan*, [1904] P. 163; *Scott v. Scott*, [1912] P. 241.

293. Central Criminal Court.—The Central Criminal Ct. is a superior ct., & mandamus will not lie to compel the judges & justices thereof to order restitution of stolen goods under Larceny Act, 1861 (c. 96), s. 100.—*R. v. CENTRAL CRIMINAL COURT JJ.* (1883), 11 Q. B. D. 179; 52 L. J. M. C. 121; 47 J. P. Jo. 116; 15 Cox, C. C. 324.

Annotation:—*Reid. Re Woodall* (1888), 57 L. J. M. C. 71.

294. Within Railway Regulation Act, 1873 (c. 76), s. 3.—By the above sect. the term "superior ct." means, in England, any of the superior cts. at Westminster; in Ireland, any of the superior cts. in Dublin; & in Scotland, the Ct. of Session.—*MACFARLANE v. NORTH BRITISH RY. CO.* (1883), 4 Ry. & Can. Tr. Cas. 206.

SECT. 2.—INFERIOR COURTS.

Liverpool Court of Passage.—*See* Nos. 1053, 1054, *post*.

PART VII. SECT. 1.

a. Court of Wills & Probate.—The Ct. of Wills & Probate for the county of L. in N. S., was not a superior ct. within Supreme & Exchequer Ct. Act, s. 17, before amendment by 52 Vict. c. 37, s. 2.—*BRAMISH v. KAULBACH* (1879), 3 S. C. R. 704.—*CAN.*

b. Court of Oyer & Terminer.—A Ct. of Oyer & Terminer & of General Gaol Delivery is a superior ct.; & in a warrant of commitment by the presiding judge for contempt, the adjudication of contempt, may be general, & the particular circumstances need not be set out.—*Re M'ALEER* (1873), 1 R. 7 C. L. 146.—*IR.*

PART VII. SECT. 2.

a. Courts of Mines.—The Cts. of Mines are inferior cts. in their relation to the Colonial Supreme Ct., which possesses the same powers in respect to

them as are exercised by the Q. B. in England.—*COLONIAL BANK OF AUSTRALIA v. WILLAN* (1874), 22 W. R. 516.—*AUS.*

t. Small Cause Court.—The Small Cause Ct. in the Presidency town is not a ct. of co-ordinate jurisdiction with the High Ct., but a ct. of inferior jurisdiction.—*Re OMRITALL DEY* (1875), 1 L. R. 1 Calc. 78.—*IND.*

PART VII. SECT. 3, SUB-SECT. 1.

a. Civil Court of City of Portland.—The City of Portland Civil Ct. is not a ct. of record.—*R. v. RITCHIE, Re McGINNIS* (1891), 30 N. B. R. 591.—*CAN.*

b. County courts.—If expressly so declared by statute.—*O'Reilly v. N* (1854), 11 U. C. R. 526.—*CAN.*

c. ———.—*R. v. ST. DENIS* (1875), 8 P. R. 16.—*CAN.*

d. ———.—*R. v. MURRAY* (1897), 28 O. R. 549.—*CAN.*

295. Mayor's Court, London.—Mandamus to the Lord Mayor & Aldermen of London to admit A. an attorney of one of the superior cts. at Westminster, to be an attorney of a certain inferior ct. within the City of London, called the Mayor's Ct., on signing the roll of the ct. Return stated the ct. to be an immemorial ct., with immemorial & peculiar privileges, which were set forth, & that there was not, & never had been, a roll for appct. to sign:—*Held*: (1) the Mayor's Ct. was an inferior ct.; (2) Solrs. Act, 1813 (c. 73), s. 27 applied to all inferior cts., whether they had or had not a roll upon which the names of attorneys practising in them were inscribed.—*R. v. LONDON CORPN.* (1817), 13 Q. B. 1; 2 New Pract. Cas. 52; 16 L. J. Q. B. 185; 8 L. T. O. S. 536; 11 Jur. 867; 116 E. R. 1163; *reversd.* on other grounds *sub nom. LONDON CORPN. v. R.* (1848), 13 Q. B. 30, Ex. Ch.

Annotations:—*As to* (1) *Consd. London Corp'n. v. Cox* (1867), 1 L. R. 2 H. L. 239; *Cooke v. Gill* (1873), 1 L. R. 8 C. P. 107. *Reid. Morris v. Laughton* (1864), 9 L. T. 767. *Generally, Mentd. Skelton v. Rushby* (1849), 4 Exch. 545; *R. v. S. E. Ry.* (1853), 4 H. L. Cas. 471.

296. ———.—*LONDON CORPN. v. COX*, No. 23, *ante*.

Court of Chivalry.—*See* No. 977, *post*.
County courts.—*See* COUNTY COURTS, Vol. XIII., p. 555, No. 1125.

See, generally, Part XXIII.

SECT. 3.—COURTS OF RECORD AND NOT OF RECORD.

SUB-SECT. 1.—WHAT ARE.

297. Court of Chancery.—The Ct. of Ch. is a ct. of record for the recording of copies of depositions & other records & these are authentic.—

e. ———.—*R. v. STEWART* (1909), 43 N. S. R. 353; 6 E. L. R. 561; 15 Can. Crim. Cas. 331.—*CAN.*

f. Magistrate's court.—Not unless so declared by statute.—*YOUNG v. WOODCOCK* (1847), 3 Kerr, 551.—*CAN.*

g. Whether so declared in Habeas Corpus Act.—*R. v. GIBSON* (1898), 29 O. R. 660.—*CAN.*

h. Court of Oyer & Terminer & General Gaol Delivery.—The Ct. of Oyer & Terminer is a ct. of record of a very high nature, & much regarded in the law, & not to be considered in the same light with petty cts. of limited authority, instituted for special purposes.—*BATTY v. FAY* (1795), 1 Ridd. L. & S. 511.—*IR.*

k. Petty Sessions.—A Ct. of Petty Sessions is a ct. of record within Commonwealth Act No. 11.—*FALLSHAW BROTHERS v. RYAN* (1902), 28 V. L. R. 279.—*AUS.*

l. ———.—A ct. of Petty Sessions

Sect. 3.—Courts of record and not of record: Sub-sects. 1 & 2. Sects. 4, 5 & 6. Part VIII. Sects. 1 & 2. Part IX.]

KINSTON v. DERBY (EARL) (1626), 1 Rep. Ch. 15; 21 E. R. 493.

298. Court having power to fine & imprison.]—A ct., which is not of record, cannot impose a fine nor commit to prison.—**BEECHER'S CASE** (1608), 8 Co. Rep. 58 a; 77 E. R. 559.

*Annotations:—***Refd.** Langham's Case (1641), March 179; Groenvelt v. Burwell (1700), 1 Salk. 200; Kemp v. Neville (1861), 10 C. B. N. S. 523. **Mentd.** Cotton v. Westcott (1617), Cro. Jac. 441; Hussey v. Moro (1617), Cro. Jac. 413; Darcy v. Jackson (1622), Palm. 224; Eardley v. Turnock (1622), Cro. Jac. 629; Mason v. Fox (1622), Cro. Jac. 632; Threadneedle v. Linum (1674), Freem. K. B. 179; Walwin v. Smith (1691), 4 Mod. Rep. 86; Warner v. Green (1701), 12 Mod. Rep. 580; Kent v. Kent (1734), 2 Barn. K. B. 441; R. v. York (1832), 3 B. & Ad. 770; London Corp'n. v. R. (1848), 13 Q. B. 30.

299. —.]—A ct. having power to fine & imprison is a ct. of record.—**GROENVELT v. BURWELL** (1700), Salk. 200; Carth. 491; 1 Com. 76; 1 Ld. Raym. 454; 91 E. R. 179; *sub nom.* **GROENVILLE v. PHYSICIANS' COLLEGE**, 12 Mod. Rep. 386.

*Annotations:—***Consd.** Kemp v. Neville (1861), 10 C. B. N. S. 523. **Refd.** Scott v. Bye (1824), 2 Bing. 344; Garnett v. Ferrand (1827), 6 B. & C. 611. **Mentd.** R. v. Green (1715), Fortes. Rep. 274; R. v. Dublin (1723), 1 Stra. 536; R. v. Scarborough (1728), 1 Barn. K. B. 113; R. v. Preston, Cheshire (1735), 2 Stra. 1040; Evans v. Harrison (1762), Wilm. 130; Crowther v. Ramsbottom (1798), 7 Term Rep. 634; R. v. Despard (1798), 7 Term Rep. 736; Brittain v. Kinnaird (1819), 1 Brod. & Bing. 432; R. v. Rogers (1822), 1 Dow. & Ry. K. B. 156; Basten v. Carew (1825), 3 B. & C. 649; Tingle v. Roston (1825), 3 L. J. O. S. C. P. 100; Lucas v. Nockells (1833), 10 Bing. 157; Bristol Grdns. v. Wait (1834), 1 Ad. & El. 264; Daniell v. Phillips (1835), 1 Cr. M. & R. 662; Ridgway v. Hungerford Market Co. (1835), 4 Nev. & M. K. B. 797; Baillie v. Kell (1836), 4 Bing. N. C. 638; R. v. Thomas (1838), 8 Ad. & El. 183; *Ex p.* Bartlett (1843), 7 J. P. 578; Lindsay v. Leigh (1848), 12 Jur. 266; R. v. Hallett (1851), 3 Car. & Kir. 130; *Ex p.* Napton Overseers (1856), 20 J. P. 581; Hooper v. Lane (1857), 6 H. L. Cas. 443; Phillips v. Whitsett (1860), 2 E. & E. 804; *Ex p.* Fernandez (1861), 9 W. R. 632; R. v. Saddlers' Co. (1863), 10 H. L. Cas. 404; Wildes v. Russell (1866), L. R. 1 C. P. 722; Grimwood v. Moss (1872), L. R. 7 C. P. 360; R. v. Nicholson, etc. Bolton JJ. R. v. Greenhalgh, etc. Bolton JJ., *Ex p.* Bamber (1899), 81 L. T. 257; Serjeant v. Nash (1903), 89 L. T. 112.

300. —.]—The justices [of a ct. leet] are a ct. of record by 27 Eliz., inasmuch as they have a power given them to fine & imprison, & for a contempt done in such ct. undoubtedly the judges of it may commit (PAGE, J.).—*R. v.* COTTON (1733), 2 Barn. K. B. 313; 94 E. R. 523.

301. Whether court of equity.]—*Qu.*: whether a ct. of equity is a ct. of record within the meaning of 41 Geo. 3, c. 107, s. 1 or 54 Geo. 3, c. 156, s. 4. — **COLBURN v. SIMMS** (1843), 2 Hare, 543; 12 L. J. Ch. 388; 7 Jur. 1104; 67 E. R. 224.

*Annotations:—***Mentd.** Powell v. Aitken (1858), 4 K. & J. 343; Webster v. Power (1868), L. R. 2 P. C. 69; Mansell v. Valley Printing Co., [1908] 2 Ch. 441.

302. Court of Chancery of Isle of Man.]—Where the Ct. of Ch. of the Island, which is a ct. of record, has committed a party for contempt in publishing, out of ct., a newspaper, considered by the ct. to be defamatory of its proceedings, the Ct. of Q. B. will not interfere by *habeas corpus*.—*Re* RAWFORD (1849), 13 Q. B. 613; 7 State Tr. N. S. 961; 18 L. J. Q. B. 225; 13

L. T. O. S. 185; 13 J. P. 634; 13 Jur. 955; 116 E. R. 1397.

*Annotations:—***Mentd.** *Ex p.* Anderson (1861), 3 L. T. 622; *Ex p.* Brown (1864), 5 B. & S. 280; Martin v. Mackonochie (1879), 4 Q. B. D. 697.

303. Railway & Canal Commissioners.]—By the Railway & Canal Traffic Act, 1888 (c. 25), the Railway & Canal Commission, which as regards England consisted of one *ex officio* & two appointed comrs., is established as a ct. of record, & an appeal lies from the commission to the Ct. of Appeal except upon questions of fact & *locus standi*.—**NATIONAL TELEPHONE CO., LTD. v. POSTMASTER-GENERAL**, [1913] A. C. 516; 82 L. J. K. B. 1197; 109 L. T. 562; 29 T. L. R. 637; 57 Sol. Jo. 661, H. L.

*Annotations:—***Refd.** Cheshire Lines Committee v. Butler, Greenough & Esplen & Walford (Liverpool) (1917), 16 Ry. & Can. Tr. Cas. 212; Canada Cement Co. v. East Montreal Town, [1922] 1 A. C. 249. **Mentd.** *Re* Boaler, *Re* Vexatious Actions Act, 1896, [1915] 1 K. B. 21; Oldham, Ashton & Hyde Electric Tramway v. Ashton Corp'n., [1921] 3 K. B. 511.

304. Not military court of enquiry.]—**DAWKINS v. ROKEBY (LORD)**, No. 2, *ante*.

Admiralty court.]—*See* ADMIRALTY, Vol. I., p. 99, Nos. 4, 5.

Coroners' courts.]—*See* CORONERS, Vol. XIII., p. 232, Nos. 4–6.

Cambridge University Chancellor's Court.]—*See* Part XXIII., Sect. 3, sub-sect. 3, *post*.

Court of Common Council of London.]—*See* No. 1065, *post*.

Court leet.]—*See* COPYHOLDS, Vol. XIII., p. 35, Nos. 357.

Commissioners of Sewers.]—*See* Part XXV., Sect. 4, *post*.

County courts.]—*See* COUNTY COURTS, Vol. XIII., p. 448, Nos. 1, 2.

SUB-SECT. 2.—POWERS OF.

305. To fine & imprison.]—Cts. which are not of record cannot impose a fine or commit any to prison.—**GRIESLEY'S CASE** (1588), 8 Co. Rep. 38 a; 77 E. R. 530.

*Annotations:—***Refd.** Langham's Case (1641), March. 179. **Mentd.** Godfrey's Case (1614), 11 Co. Rep. 42 a; James v. Tutney (1639), Cro. Car. 532; Crawley's Case (1640), Cro. Car. 567; Fletcher v. Ingram (1695), 1 Ld. Raym. 69; Savile v. Roberts (1698), 1 Ld. Raym. 374; Groenvelt v. Burwell (1699), 1 Ld. Raym. 454; R. v. Layton (1709), 11 Mod. Rep. 236; Edwards v. Hughes (1726), Gilb. Ch. 209; R. v. Adlard (1825), 4 B. & C. 772; R. v. Faulkner (1835), 5 Tyr. 915; R. v. Mosley (1835), 3 Ad. & El. 488.

306. —.]—**BEECHER'S CASE**, No. 298, *ante*.

307. —.]—**GROENVELT v. BURWELL**, No. 299, *ante*.

308. —.]—*R. v.* COTTON, No. 300, *ante*.

309. —.]—**KEMP v. NEVILLE**, No. 1035, *post*.

310. To commit—For misdemeanour in court.]—Upon a *habeas corpus* by T. the return was: that T. was committed by G. & others, Ecclesiastical Comrs., till further order should be taken for her enlargement; & the cause of the commitment was, *inter alia*, for divers contemptuous words against the ct.:—*Held*: it was no ct. of record, for that it proceeded according to the civil law,

by virtue of its having statutory power to fine & imprison is a ct. of record.—**COOPER & SONS v. DAWSON**, [1916] V. L. R. 381.—**AUS.**

m. Court of Police Commissioner.] The court of a Police Comr. is a court of record for British Columbia within British Columbia Replevin Act, 1873.—**KEEFER v. TODD** (1886), 1 B. C. R. 249.—**CAN.**

n. Quarter Sessions.]—**FINLEY v.**

KEILY (1849), 3 Nfld. L. R. 141.—**NFLD.**

o. —.]—The Ct. of Quarter Sessions is a ct. of record.—**OVENS v. TAYLOR** (1868), 19 C. P. 49.—**CAN.**

p. Not military court.]—**UNION GOVERNMENT v. WEST**, [1918] App. D. 556.—**S. AF.**

298 i. Courts with limited power to fine & imprison.]—A limited power

given to a ct. to fine & imprison does not constitute it a ct. of record.—**YOUNG v. WOODCOCK** (1847), 3 Kerr, 554.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.

305 i. To fine & imprison.]—**OVENS v. TAYLOR** (1868), 19 C. P. 49.—**CAN.**

305 ii. —.]—*R. v.* ST. DENIS (1875), 8 P. R. 16.—**CAN.**

& it was like the Admty. Ct., & for this they could not imprison, for none should be committed for misdemeanour in ct., unless the ct. was of record.—THROGMORTON'S (LADY) CASE (1610), 12 Co. Rep. 69; 77 E. R. 1347.

See, also, CONTEMPT OF COURT, ATTACHMENT & COMMITTAL, pp. 6, 10, 14, 17, Nos. 2, 27, 30, 78, 126, *ante*.

SECT. 4.—SECULAR AND SPIRITUAL.

See ECCLESIASTICAL LAW.

SECT. 5.—ORIGINAL AND APPELLATE.

See Part XI., *post*.

SECT. 6.—COURTS HELD BY THE SUBJECT.

311. General rule—Forest courts.]—A subject may have a forest, but cannot have a justice seat. He may have a swanmark ct., & the other cts., & a commission to execute them.—COMINS CASE (1629), Het. 60; 124 E. R. 342.
Annotation:—Mentd. Bury St. Edmund Corpn. v. Evans (1739), 2 Com. 643.

Manorial courts.]—*See* COPYHOLDS, Vol. XIII., pp. 32 *et seq*.

Part VIII.—High Court of Parliament.

SECT. 1.—HOUSE OF LORDS.

Jurisdiction.]—*See* PARLIAMENT; PEERAGES & DIGNITIES.

The Lord Chancellor.]—*See* CONSTITUTIONAL LAW, Vol. XI., p. 509, Nos. 105 *et seq*.

Judges.]—*See* PARLIAMENT; PUBLIC AUTHORITIES & PUBLIC OFFICERS.

Officers.]—*See* PARLIAMENT; PUBLIC AUTHORITIES & PUBLIC OFFICERS.

Criminal jurisdiction.]—*See* CRIMINAL LAW & PROCEDURE.

SECT. 2.—HOUSE OF COMMONS.

Jurisdiction.]—*See* PARLIAMENT.

Officers.]—*See* PARLIAMENT; PUBLIC AUTHORITIES & PUBLIC OFFICERS.

Criminal jurisdiction.]—*See* CRIMINAL LAW & PROCEDURE.

Part IX.—Court of Lord High Steward.

312. Jurisdiction—Trial of peer—For treason.]—The trial of a peer for treason or felony is by indictment, & upon this he shall be arraigned before the Constable of England, or the High Steward, & he shall be tried by his peers upon their honours, not upon their oaths. There must be twelve peers at least & the lowest peer shall give his verdict first & so *seriatim*.—ANON. (1399), Jenk. 73; 115 E. R. 52.

313. ——— For felony.]—ANON., No. 312, *ante*.

314. ——— When Parliament sitting.]—On the trial by commission of an indictment for high treason, Lord D. pleaded that he ought to be tried by the whole body of the House of Peers in Parliament, because Parliament was still sitting, being under a prorogation, & not dissolved; & because there was some agitation of the matter concerning the prosecution, upon his petition, in the House of Lords:—*Held*: the ct. had jurisdiction, & the plea would be overruled & rejected.—DELAMERE'S (LORD) CASE (1686), 11 State Tr. 510.

Annotations:—Mentd. R. v. Kinloch (1746), 18 State Tr. 395; R. v. Kinnear (1819), 2 B. & Ald. 462; R. v. Winsor (1865), 10 Cox, C. C. 276.

315. Constitution—Not altered by Treason Act, 1695 (c. 3), s. 10.]—General words in an Act must be controlled by the apparent intent of the legislature.

The above sect. applies both to the ct. of the High Steward, & that in full Parliament, but it does not alter the nature & constitution of either. Consequently it does not give the Lords Spiritual any right to vote in cases of treason which they had not before although they are entitled to be summoned.—R. v. KILMARNOCK (EARL) (1746), Fost. 247.

316. Distinguished from court of King in Parliament.]—(1) The name, style & title of office in the case of a proceeding in the ct. of the High Steward & before the King in Parliament is the same, but the offices, powers & pre-eminences annexed to them differ very widely, & so does the constitution of the cts. where the offices are executed.

(2) In the Ct. of the High Steward he alone is judge in all points of law & practice. The peers triers are merely judges of fact, & are summoned by virtue of a precept from the High Steward to appear before him on the day appointed by him for the trial, *ut rei veritas melius sciri poterit*.

(3) The High Steward's commission, after reciting that an indictment has been found against a peer by the grand jury of the proper county, empowers him to send for the indictment, to convene the prisoner before him at such day & place as he shall appoint, then & there to hear & determine the matter of such indictment, to cause the peers triers *tot et tales per quos rei veritas melius sciri poterit* at the same day & place to appear before him; *veritateque inde comperit*, to proceed to judgment according to the law & custom of England, & thereupon to award execution.

(4) The sole right of judicature is in cases of this kind vested in the High Steward, it resides solely in his person, & consequently without this commission, which is but in the nature of a commission of oyer & terminer, no one step can be taken in order to a trial; & when his commission is dissolved, which he declares by breaking his staff, the ct. no longer exists.—FERGUSON'S (EARL) CASE (1760), Fost. 138; 19 State Tr. 885.

317. Form of commission.]—FERRERS' (EARL) CASE, No. 316, ante.

318. Procedure—High Steward sole judge of law & practice.]—FERRERS' (EARL) CASE, No. 316, ante.

319. — Peers judges of fact only.]—FERRERS' (EARL) CASE, No. 316, ante.

320. — Verdict not upon oath.]—ANON., No. 312, ante.

See, also, PARLIAMENT.

Part X.—The Judicial Committee of the Privy Council.

SECT. 1.—NATURE AND CONSTITUTION.

See Judicial Committee Act, 1833 (c. 41); Judicial Committee Act, 1844 (c. 69); Appellate Jurisdiction Act, 1876 (c. 59); Appellate Jurisdiction Act, 1887 (c. 70); Judicial Committee Amendment Act, 1895 (c. 44); Appellate Jurisdiction Act, 1908 (c. 51); Appellate Jurisdiction Act, 1913 (c. 21); Judicial Committee Act, 1915 (c. 92).

321. Status of Judicial Committee—Advisers of Crown.]—Colonial statutes which purport to give an appeal to the Privy Council of England, in case their Lordships are pleased to entertain the appeal, are *ultra vires*, & ignore the constitutional rule that an appeal lies in Her Majesty & not to the Judicial Committee, who are merely the Queen's advisers, upon whom no jurisdiction can be conferred by any colonial legislature.—*A.-G. FOR DOMINION OF CANADA v. A.-G. FOR ONTARIO, A.-G. FOR QUEBEC v. A.-G. FOR ONTARIO*, [1897] A. C. 199; 66 L. J. P. C. 11; 75 L. T. 522; 13 T. L. R. 103, P. C.

322. — —.]—KRISTO KINKUR ROY v. BURRODACAUNT ROY (RAJAH), No. 681, post.

323. Judges—Disqualification of—Counsel in lower court—Time for taking objection to such judge sitting.]—Where one of the judges of the Judicial Committee of the Privy Council was counsel in a cause in the lower ct., although he had not seen the evidence nor argued thereon, on objection taken the ct. will be reconstituted so as to exclude him. Where such an objection is taken at the last moment, the ct. will require an affidavit from the agent of the party who raises the objection, that, at the last sitting of the ct., he was not aware that the committee for hearing

Notes of Cases, 144, P. C.

Annotation:—Mentd. Straubenzeo v. Monck (1862), 8 Jur. N. S. 1159.

SECT. 2.—JURISDICTION.

SUB-SECT. 1.—IN GENERAL.

See Judicial Committee Act, 1844 (c. 69), ss. 1, 9; Appellate Jurisdiction Act, 1908 (c. 51), s. 5; Judicial Committee Act, 1915 (c. 92), s. 1 (1).

324. When jurisdiction arises—Whether before lodgment of petition of appeal.]—(1) The Judicial Committee have no jurisdiction to entertain an application for extension of time to appeal until the petition of appeal is lodged.

(2) In circumstances where it appeared that an inquiry was pending before the master in the ct. below, arising out of the decree, the subject of the appeal, the finding of whom might render the prosecution of the appeal unnecessary, the Judicial Committee suspended the proceedings on the appeal & enlarged the time prescribed by Ord. in Council of June 13, 1853, r. 5, for prosecution thereof, until further order.—*GUNGADHUR SEAL v. SREEMUTTY RADDAMONEY DOSSEE* (1855),

9 Moo. P. C. C. 411; 6 Moo. Ind. App. 209; 14 E. R. 354, P. C.

325. — —.]—Qu.: if the Judicial Committee have any jurisdiction over an appeal before the petition of appeal is lodged & referred to them.—*How v. KIRCHNER* (1857), 11 Moo. P. C. C. 21; 14 E. R. 602, P. C.

Annotations:—Mentd. Kirchner v. Venus (1859), 12 Moo. P. C. C. 361; *The Canada* (1897), 13 T. L. R. 238.

326. — —.]—(1) Claimant, the owner of a cargo, moved, upon notice to the captor, for leave to appeal from a sentence of the Admty. Ct. of England, pronounced in *poenam contumaciae*, fifteen months after the capture. The proceedings in England were unknown to the owner of the cargo, & the sentence of condemnation not having been communicated by the captors to the owner, he had no knowledge thereof until long after the time for appealing had expired. On the motion coming on, it appeared that no petition for leave to appeal had been lodged or referred to the Judicial Committee, but upon an undertaking to lodge a petition of leave to appeal the motion was heard.—*Held*: the appeal must be allowed, subject to the presentment of such petition of appeal, on payment of costs, upon terms of extracting the inhibition, & prosecuting the appeal within three months, bail being given for payment of the captor's costs.

(2) On an application by resp. to discharge the order, the practice, where an appeal is allowed after notice, was discussed.—*CREMIDJ v. PARKER, THE ASPASIA* (1857), 11 Moo. P. C. C. 79; 14 E. R. 625, P. C.

327. Extent of jurisdiction—No original jurisdiction.]—*Semble*: the Judicial Committee have no jurisdiction to determine a matter litigated in that ct.—*Re GOULD* (1838), 2 Moo. P. C. C. 188; 12 E. R. 975, P. C.

328. — —.]—(1) The Privy Council will not act as a ct. of original jurisdiction.

(2) Where the judge of the ct. below had improperly suppressed documents which were not discovered until after the transmission of the appeal to Her Majesty in Council:—*Held*: no opinion on the merits would be given & the case would be remitted to India for reconsideration.—*JUVEER-BHAE v. VURUJ-BHAE* (1844), 3 Moo. Ind. App. 324; 4 L. T. O. S. 189; 18 H. R. 521, P. C.

329. — — Except in peculiar circumstances.]—The Judicial Committee will not, except under peculiar circumstances, pronounce an original judgment from which there is no appeal; & on this ground refused to retain an ecclesiastical suit & pronounce an immediate sentence.—*MARTIN v. MACKONCHIE* (1882), 7 P. D. 94; 51 L. J. P. C. 88; 46 L. T. 699; 46 J. P. 213; 31 W. R. 1, P. C.

330. — —.]—Where no judgment has been given by the ct. below, the Judicial Committee will not hear a case on the merits as a ct. of first instance, even if it has all the evidence before it.—*KENT v. COMMUNAUTÉ DES SOEURS DE*

DE LA PROVIDENCE, [1903] A. C. 220; 72 L. J. P. C. 61; 88 L. T. 275; 19 T. L. R. 345, P. C.

In ecclesiastical appeals.]—See Nos. 520, 521, *post*.

331. — Appellate jurisdiction—Right of alien to appeal—Alien ami.]—*Semble*: if a ct. administering justice on the King's behalf makes an order, judicial in its nature, by which someone is unjustly & injuriously affected, the person aggrieved is not precluded from applying to the King in Council to redress his wrong, merely by the fact that he is not the King's subject.—HEMCHAND DEVCHAND *v.* AZAM SAKARLAL (HHOTAMLAL, [1906] A. C. 212; 22 T. L. R. 208, P. C.

— — — **Alien enemy.]—See PRIZE LAW JURISDICTION.**

In what matters.]—See Sub-sects. 2, 3, 5, 7, 8, *post*.

332. — To issue mandatory order—To lower court—To enter up judgment after verdict.]—The Judicial Committee have no power under their general jurisdiction, as a ct. of error, to issue an order in the nature of a mandamus to the Ct. of Common Pleas of Tabago, to enter up judgment after verdict obtained on behalf of pltf. in an action of assault, though such judgment ought to have been entered up as of course.—*Re* MUIR (1839), 3 Moo. P. C. C. 150; 13 E. R. 65, P. C. *Annotations:—Re* Manning's Assignees (1840), 3 Moo. P. C. C. 154; *Re* Whitfield (1845), 5 Moo. P. C. C. 157. *Mentd.* Colonial Bank *v.* Warden (1846), 5 Moo. P. C. C. 340.**

333. — — —.]—The Judicial Committee have no power to issue a mandatory order.—*DE SOUZA'S PETITION* (1885), 1 T. L. R. 597, P. C.

334. — To order release of party imprisoned for contempt—Pending appeal.]—(1) The Judicial Committee has no jurisdiction to direct the release of a party imprisoned for a contempt in the ct. below, pending an appeal respecting the merits of the suit.

(2) Evidence, not adduced in the ct. below or forming part of the transcript, admitted on motion to be used at the hearing of the appeal, subject to all just exceptions.—*HUGHES v. PORRAL* (1842), 4 Moo. P. C. C. 41; 13 E. R. 216, P. C.

335. — — —.]—*Re* DE SOUZA (1888), *Times*, Dec. 3.

336. When jurisdiction determined—Remittal to lower court under order of reference.]—*JESWUNT SING-JEE UBBY SING-JEE v. JET SING-JEE UBBY SING-JEE*, No. 587, *post*.

337. — Original suit concluded.]—Subsequent to an order in Council reversing a sentence of the Prerogative Ct., & decreeing probate of a will of 1825, a will dated Mar., 1851, was discovered, & an application was made to the Judicial Committee for probate:—*Held*: the original suit being concluded, the jurisdiction of the Judicial Committee was exhausted, but if a petition was presented to Her Majesty to refer the matter specially to them, they would entertain the application.—*CUTTO v. GILBERT* (1854), 9 Moo. P. C. C. 131; 14 E. R. 247, P. C.

*Annotations:—**Mentd.* Brown *v.* Brown (1858), 8 E. & B. 876; Wharram *v.* Wharram (1864), 3 Sw. & Tr. 301; Lemage *v.* Goodban (1865), L. R. 1, P. & D. 57; Berthon *v.* Berthon (1868), 18 L. T. 301; Homeston *v.* Hewett (1872), 25 L. T. 854; Silver *v.* Silver (1872), 27 L. T. 766; *In the Goods of De la Saussaye* (1873), L. R. 3, P. & D. 42; *In the Goods of Howden* (1874), 43 L. J. P. & M. 26; *Dempsey v. Lawson* (1877), 2 P. D. 98; *Hellier v. Hellier* (1884), 9 P. D. 237; *Townsend v. Moore*, [1905] P. 66.

338. Ouster of jurisdiction—Undertaking not to appeal.]—(1) The High Ct. at Calcutta, at the instance of applt.'s counsel, agreed to confine the

decision of that ct. to one point, with an undertaking that no appeal to Her Majesty in Council should be made from the decree. Notwithstanding such undertaking, an appeal was brought to England. The High Ct. certified in the record the undertaking:—*Held*: such undertaking precluded an appeal.

(2) As resps. had not applied in the first instance to dismiss on that ground, but had allowed the case to proceed to the hearing of the appeal, costs *nomine expensarum* only were allowed.—*AMEER ALI (MOONSHEE) v. INDERJEET SINGH (MAHARANEE)* (1871), 14 Moo. Ind. App. 203; 20 E. R. 763, P. C.

SUB-SECT. 2.—APPEALS IN ADMIRALTY MATTERS

In admiralty causes.]—See ADMIRALTY, Vol. I., pp. 236-241.

In prize cases.]—See PRIZE LAW & JURISDICTION.

SUB-SECT. 3.—APPEALS IN ECCLESIASTICAL MATTERS.

Jurisdiction generally.]—See ECCLESIASTICAL LAW.

Appeals from colonial bishops.]—See DEPENDENCIES, COLONIES & BRITISH POSSESSIONS.

Power of Judicial Committee to retain suit on appeal.]—See Nos. 329, *ante*, 520, 521, *post*.

SUB-SECT. 1.—JURISDICTION AS TO COPYRIGHT. *See* Copyright Act, 1911 (c. 46), s. 4.

SUB-SECT. 5.—APPEALS FROM COURTS OUTSIDE UNITED KINGDOM.

Consular courts.]—See Part XVI., *post*.

Colonial courts.]—See DEPENDENCIES, COLONIES & BRITISH POSSESSIONS.

In criminal matters.]—See No. 958, *post*; DEPENDENCIES, COLONIES & BRITISH POSSESSIONS.

SUB-SECT. 6.—JURISDICTION AS TO SCHEMES FOR ENDOWED SCHOOLS.

See Endowed Schools Acts, 1869 (c. 56), s. 39, 1873 (c. 87), s. 11, & *generally*, EDUCATION.

SUB-SECT. 7.—APPEALS AS TO COSTS.

339. General rule.]—The rule with respect to costs in the House of Lords, as in the Privy Council, & in Ch., is that one cannot appeal for costs alone, but if an appeal be brought on the merits, not on colourable grounds of appeal, for the purpose of raising the question of costs, the House will not treat that as an appeal for costs, but will, even in affirming the judgment of the ct. below, consider the question of costs as fairly raised, & where there is hardship on applt., will reverse so much of the judgment of the ct. below

Sect. 2.—Jurisdiction: Sub-sects. 7 & 8. Sect. 3:
Sub-sect. 1, A. (a), (b) & (c).]

as gave costs against him.—**INGLIS v. MANSFIELD** (1835), 3 Cl. & Fin. 302; 6 E. R. 1472, H. L.

Annotations:—**Refd.** Rieken v. Yorke Peninsula JJ., **KEAM**,
 Adelaide Licensing JJ., [1908] A. C. 454. **Mentd.**
 Gordon-Cunning v. Houldsworth, [1910] A. C. 537.

340. —[**Semble:** the Judicial Committee will not entertain an appeal merely for costs.—**KEEMEE BAE (MUSSUMAT) v. LATCHMAN-DAS NARRAIN-DAS** (1837), 1 Moo. Ind. App. 470; 18 E. R. 188, P. C.

341. —[**On an appeal from a decree of the Vice-Admty. Ct. of Sierra Leone, restoring property seized for breach of the customs laws, but without damages or costs, as it was held that there was probable cause for the seizure:—Held:** as regarded one of the appls., who proved not to be owner of the goods, though so proceeded against, the appeal was for costs alone & could not be entertained.—**WILSON v. R.** (1866), L. R. 1 P. C. 405; 4 Moo. P. C. C. N. S. 307; 16 E. R. 333, P. C.

Annotation:—**Refd.** Rieken v. Yorke Peninsula JJ., **KEAM**
 v. Adelaide Licensing JJ., [1908] A. C. 454.

342. Costs in discretion of court below—No mistake or misapprehension in court below.]—Where costs are in the discretion of the ct. below, an appeal will not lie in respect of costs alone, unless the ct. below has proceeded upon a mistake or misapprehension. Where there has been *bona fide* care exercised by the judge who refused costs, no appeal will be permitted which involves a question of costs only.—**ATTENBOROUGH v. KEMP** (1861), 14 Moo. P. C. C. 351; 5 L. T. 67; 25 J. P. 627; 7 Jur. N. S. 665; 9 W. R. 771; 15 E. R. 338, P. C.

Annotation:—**Consd.** Richards v. Birley (1861), 2 Moo. P. C. C. 96.

343. —[**Where the Ecclesiastical Ct., in a suit for subtraction of church rate, holds the rate to be void on the ground of irregularities at the vestry meeting, but nevertheless in its discretion refuses to give defts. their costs of the suit, if this discretion has been bona fide exercised by such ct. the Privy Council will not entertain an appeal solely on the ground of this refusal of costs.**—**RICHARDS v. BIRLEY** (1861), 2 Moo. P. C. C. N. S. 96; 10 L. T. 112; 28 J. P. 600; 15 E. R. 838, P. C.

344. Costs amounting to appealable value.]—Appeals to the Judicial Committee merely for the sake of costs will not be allowed, even if the costs amount to the appealable value.—**CREDIT FONCIER OF MAURITIUS v. PATURAU** (1876), 35 L. T. 869, P. C.

345 No question of law involved.]—The ct., having made absolute a rule for prohibition at the instance of appls. against resp. justices, refused to order them to pay appls.' costs:—**Held:** an appeal did not lie as there had been no mistake of law, & the ct. had exercised its judicial discretion.—**RIEKEN v. YORKE PENINSULA JJ., KEAM v. ADELAIDE LICENSING JJ.**, [1908] A. C. 454; 78 L. J. P. C. 45; 99 L. T. 529; 24 T. L. R. 821, P. C.

346. Construction of statute involved.]—By Public Works Act, 1912, of New South Wales

PART X. SECT. 2, SUB-SECT. 7.

342.1. Costs in discretion of court below.]—When the question is only as to the discretion of a colonial ct., the rule is that the Privy Council will not review that discretion.—**DAVIES v. HARRIS** (1884), 5 N. S. W. L. R. 55.—**AUS.**

q. Taration of costs.]—No appeal will lie to the Privy Council from a decision refusing a review of taxation of a bill of costs.—**RE MAONAMARA'S COSTS** (No. 2) (1884), 5 N. S. W. L. R. 342; 1 N. S. W. W. N. 23.—**AUS.**

PART X. SECT. 2, SUB-SECT. 8.

343.1. Matter of procedure.]—No

(No. 45 of 1912), s. 118, it was provided that, in the case of an arbn. under s. 107 of that Act to settle the compensation payable for lands compulsorily acquired for public purposes, (a) all the costs should be borne by the constructing authority unless the sum awarded by the arbitrators was the same or a less sum than was offered by the constructing authority, in which case each party should bear his own costs; (b) if the sum awarded was one-third less than the amount claimed, the whole costs should be borne by claimant. The arbitrators awarded a sum which was larger than that offered by the constructing authority, but more than one-third less than the amount claimed:—**Held:** all the costs of the arbn. should be paid by the constructing authority.—**RAILWAYS & TRAMWAYS CHIEF COMR. v. HUTCHINSON** (1914), 110 L. T. 915, P. C.

See, also, ADMIRALTY, Vol. I., p. 237, No. 1630.

SUB-SECT. 8.—APPEALS IN OTHER

347. Decision of Treasury—As to grants by Crown of property accruing by virtue of prerogative.]—**Semble:** the Privy Council will not exercise jurisdiction as a Ct. of appeal from the decisions of the Lords Comrs. of the Treasury, as to grants by the Crown of property accruing to it by virtue of its prerogative.—**DECCAN ARMY CASE** (1833), 2 Knapp, 103; 12 E. R. 418, P. C.

Annotation:—**Mentd.** Banda & Kirwee Booty (1866), L. R. 1 A. & E. 109.

Lunacy matters.]—*See* LUNATICS & PERSONS OF UNSOUND MIND.

348. Matter of procedure.]—**BOSTON v. LEBLANC**, No. 610, *post*.

—[*See, also,* No. 373, *post*.

349. Error on face of record.]—(1) An appeal lies to this ct., as a ct. of error, if there be error on the face of the record such as might be moved in arrest of judgment in the ct. below.

(2) Where there is a fatal objection to the right of appeal, resp. ought to apply to quash the appeal, & not to wait till the hearing to urge such objection to its competency.—**TRONSON v. DENT** (1853), 8 Moo. P. C. C. 119; 11 E. R. 150, P. C.

Annotations:—**Mentd.** Cammell v. Sewell (1860), 5 H. & N. 728; Blasco v. Fletcher (1863), 32 L. J. C. P. 284; The Helene (1866), Brown & Lush, 420; The Freedom (1871), L. R. 3 P. C. 594; Notara v. Henderson (1872), L. R. 7 Q. B. 225; Argos, (Cargo ex) Gaudet v. Brown, The Hewsons, Geipel v. Cornforth (1873), L. R. 5 P. C. 134; Atlantic Mutual Insce. v. Huth (1880), 16 Ch. D. 474.

Committal for contempt.]—*See* CONTEMPT OF COURT, ATTACHMENT & COMMITTAL, pp. 7, 82, Nos. 7, 1005, *ante*.

350. Order on reference to court—Extra cursum curiae.]—Where proceedings are taken out of the ordinary *cursum curiae*, with the assent of the parties, the decree of the ct. below cannot be regarded as the award of an arbitrator, so as to deprive either party of the right of appeal, unless there has been an attempt to give the ct. a jurisdiction which it does not possess, or unless the procedure has been so violently strained as to be put entirely out of its course.—**PISANI v. A.-G.**

appeal will lie to the Privy Council from a decision of a colonial ct., where the question relates merely to the practice to be followed.—**RE MAONAMARA'S COSTS** (No. 2) (1884), 5 N. S. W. L. R. 342; 1 N. S. W. W. N. 23.—**AUS.**

FOR GIBRALTAR (1874), L. R. 5 P. C. 516; 30 L. T. 729; 22 W. R. 900, P. C.

Annotations:—*Mentl.* Readdy v. Pendergast (1886), 55 L. T. 767; Moody v. Cox & Hatt (1917), 116 L. T. 740.

See, generally, ARBITRATION, Vol. II., p. 317, Nos. 42-44.

351. Question of abstract & general character involved.—The Judicial Committee will abstain as far as possible from deciding questions of an abstract & general character on the interpretation of the British North America Act, 1867 (c. 3), until they come before them in actual litigation about concrete disputes.—A.-G. FOR ONTARIO v. A.-G. FOR CANADA, [1916] 1 A. C. 598; 85 L. J. P. C. 127; 114 L. T. 774, P. C.

— **When leave to appeal from colonial court granted.**—*See* DEPENDENCIES, COLONIES & BRITISH POSSESSIONS.

Issue of fact only involved.—*See* Nos. 355, 367, 368, 370, *post*.

SECT. 3.—PRACTICE AND PROCEDURE.

SUB-SECT. 1.—LEAVE TO APPEAL.

A. Petition for.

(a) In General.

352. Position of Crown.—(1) Leave to appeal against a decision pronounced in 1819, & in which no step had been taken for two years previous to the application refused.

(2) *Semble*: the Crown has no greater right than the subject to be let in to appeal, in a general case in which its interests are concerned.—LAING v. INGHAM (1839), 3 Moo. P. C. C. 26; 13 E. R. 11, P. C.

(b) Contents of.

353. Necessity for full statement—Of facts & grounds of petition.—It is incumbent upon a party applying for special leave to appeal, to set out in the petition a full statement of the facts & legal grounds, to show that there is a substantial case on the merits, & a point of law involved, proper to be determined by the appellate Ct.

A petition for special leave to appeal contained a general statement of the proceedings in India, & an averment that they were irregular & contrary to law:—*Held*: such petition must be dismissed, or stand over for amendment, as being too general & vague.—GORFE MONEE DOSSEE v. JUGGUT INDRO NARAIN CHOWDERY (1866), 11 Moo. Ind. App. 1; 11 W. R. 904; 20 E. R. 1; *sub nom.* GORFE MONEE DOSSEE v. JOGENDRO NARAIN CHOWDERY, 12 Jur. N. S. 477, P. C.

354. ———.—(1) On a petition for special leave to appeal the petition must fully & truly state all circumstances which possibly can have any bearing on the leave asked for.

(2) Where, on the evidence submitted to the Ct. below, the order was properly made, no appeal will lie on the ground that facts existed which would, if known to that Ct., have led to a different order being made, those facts, though known to applt., not having been submitted to the Ct.

(3) This is an appellate tribunal, an appellate tribunal, no doubt, which possesses large powers to admit in proper cases, by way of supplement, evidence upon points which upon the hearing may require to be elucidated, but this is certainly not a tribunal to which resort can be made by those who are obliged at the outset to confess, that they have no case for appeal as the matter stood before the judge who heard the case in the Colony & that their only ground for appeal is the intro-

duction of other matters, which were in no way before the judge of primary instance (LORD CAIRNS).

(4) On granting special leave to appeal a sum of £300 was deposited as security for resps.' costs. Three sets of resps. appeared separately. In affirming the decree appealed from it was ordered, that if the taxed costs of each of the resps. amounted to a larger sum than one-third of the sum so deposited it was to be divided ratably among the three resps.—LYALL v. JARDINE (1870), L. R. 3. P. C. 318; 7 Moo. P. C. C. N. S. 116; 39 L. J. P. C. 43; 22 L. T. 882; 18 W. R. 1050; 17 E. R. 45, P. C.

355. ———.—Petition for special leave to appeal, in a case involving only an issue of fact, refused. Such petition must state fully but succinctly the grounds upon which it is based; the record not being before the Ct. until forwarded by the proper authorities.—CANADA CENTRAL RY. CO. v. MURRAY (1883), 8 App. Cas. 571, P. C.

356. Amendment of—Statements in petition too general & vague.—GORREE MONEE DOSSEE v. JUGGUT INDRO NARAIN CHOWDERY, No. 353, *ante*.

(c) Time for.

357. After year from refusal of leave in court below.—Petition for leave to appeal need not be presented to the King in Council within a year after leave to appeal has been refused by the Ct. below.

An action was brought against D. as exor. & also as husband of the sole heiress, under a will. A few days previously to the final sentence in the Ct. below, D.'s wife died, leaving him by her will joint heir, with her children, of her property, & appointing the O.C. guardians of the children. Both D. & the O.C., who had not previously been parties, petitioned the Ct. below for leave to appeal, who refused it to the O.C. but granted it to D.:—*Held*: (1) the O.C. had a right to intervene after sentence, for the purpose of appealing, & to prosecute their appeal, although the appeal of D. had been dismissed for non-prosecution; (2) if an appeal was dismissed on account of the neglect of the guardians of infants to bring it to a decision, the infants when they came of age would have a right to revive it; (3) applt. was not permitted to insist that the judgment against which he had appealed was

parties to the suit in which objection not having been taken in the Ct. below.—ORPHAN BOARD v. VAN REENEN (1829), 1 Knapp 83; 12 E. R. 252, P. C.

358. After six years—Appellant not responsible for delay.—After a delay of six years the Judicial Committee refused to grant leave to prosecute an appeal, though the delay arose from circumstances over which, it was sworn, applt. had no control.—LINDO v. R. (1836), 1 Moo. P. C. C. 3; 12 E. R. 711, P. C.

359. After two years.—LAING v. INGHAM, No. 352, *ante*.

360. ———.—The Royal Ct. of Jersey having pronounced certain arrests made by the A.-G. of the Island to have been illegal, the original petitioner brought a petition in the Royal Ct. against the A.-G., for damages. The A.-G., upon being called upon to answer, summoned the Lieutenant-Governor, the Bailiff & Jurats, alleging that, as he had acted under their advice, they were proper parties to the suit, & they were joined with him as parties to the suit. The Bailiff & Jurats constituted the Royal Ct. The A.-G. then put in a plea that the Ct. thus constituted was incompetent, as being interested

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in, & parties to, the suit, whereupon the ct. declared itself incompetent to adjudicate in the cause. Petitioner took no further steps for two years, when he presented a petition, to the Queen in Council, & obtained a summons for the A.-G. to appear. The A.-G. petitioned to dismiss such summons on the following grounds: (a) because no leave to appeal had been granted by the ct. below. (b) because the other parties to the suit ought to have been summoned, (c) because if it was an appeal, it had not been duly prosecuted within three months from the date of the act of the ct. —*Held*: such objections were fatal, & the summons must be discharged.—*Re WHITFIELD* (1845), 5 Moo. P. C. C. 157; 13 E. R. 150, P. C.

361. After time limited.—By Bombay Charter—Special circumstances.—Petitioner consenting to terms.]—Leave given to appeal, in the circumstances, though the time limited by the Bombay Charter had expired, & the decree of the ct. below sanctioning the sale of real estate, the subject of the suit, had been partially acted upon; the petitioner undertaking not to disturb the possession or title of the purchasers of any part of the property actually sold, to give security for costs for £1,500, & to abide by any order which the Judicial Com-

Circumstances showed that there was no wilful laches in not lodging the petition of appeal in the registry of the High Ct. of Admty. within the prescribed time, & that the delay arose from the parties waiting a decision on a pending appeal, which involved a similar question:—*Held*: the circumstances justified the exercise of the discretion vested in the Judicial Committee, to admit an appeal under the sect., upon payment of the costs of the application, & giving security for further costs.—*CASSANOVA v. R., THE RICARDO SCHMIDT* (1866), L. R. 1 P. C. 115; 3 Moo. P. C. C. N. S. 484; 12 Jur. N. S. 127; 14 W. R. 617; 16 E. R. 183, P. C.

364. At hearing—Leave to appeal granted by lower court ultra vires—Leave to appeal nunc pro tunc.]—The leave to appeal granted by the court in India being under the circumstances of the case clearly *ultra vires*, an objection by resp., made before the argument on the merits had commenced, that the appeal was without authority, was allowed to prevail, & the appeal was dismissed, but without costs.

The right practice is to take objections of this kind at the earliest moment. It is however competent to their Lordships to hear it at any stage of the appeal, & also to grant in fitting cases special leave to appeal, *nunc pro tunc*, directing

CAZUM SHERAZEE (1852), 7 Moo. P. C. C. 391; 13 E. R. 931, P. C.; *sub nom. Re MUSADEE MAHOMED CAZUM SHERAZEE*, 5 Moo. Ind. App. 196.

Annotation.—*Reid. Re Subraman Ghose* (1853), 5 Moo. Ind. App. 322.

362. — By Vice-Admiralty Courts Act, 1832 (c. 51)—Ignorance of rule limiting time.]—By rules made under the above Act all appeals were to be asserted within fifteen days after the date of the decree appealed from. In Mar. 1816, a decree was pronounced by the Vice-Admty. Ct. at Saint Helena, restoring a vessel seized by a British cruiser for an alleged infraction of Slave Trade Act, 1824 (c. 113), & referring the amount of costs & damages to the registrar. No appeal was asserted by the seisor's proctor, who attended before the registrar under the decree. In Dec. of that year, a petition of appeal was brought in by the Queen's Proctor, on behalf of the seisor, which the registrar, in consequence of the appeal not having been asserted within fifteen days, refused to receive. On an application made *ex p.*, supported by affidavits stating that it was the seisor's proctor's ignorance of the rule for asserting the appeal, which alone prevented him from appealing, leave was given to appeal, subject to a counter-petition being presented by resp. to dismiss the appeal. Upon an act on protest against the right of appeal by resp.:—*Held*: there was no sufficient ground to enable the Judicial Committee to allow the appeal.—*R. v. DIAS* (1849), 6 Moo. P. C. C. 102; 13 E. R. 622.

363. — By Vice-Admiralty Courts Act, 1863 (c. 24), s. 23—Parties awaiting decision on pending appeal—No wilful laches.]—By the above sect. the time for appealing from the Vice-Admty. Cts. abroad was limited to six months, & a discretion was vested in the Judicial Committee to admit an appeal notwithstanding six months had elapsed.

Such application was refused in the present case, on the ground that the rights of applt. might be ascertained, & enforced more satisfactorily in some other proceedings than by their Lordships under the irregular appeal sent up by the ct. in India.—*GAJADHUR PERSHAD v. EMAM ALI BEG (Two Widows of)* (1875), L. R. 2 Ind. App. 205, P. C.

Time for petition for leave to appeal in forma pauperis.]—*See No. 759, post.*

Time for appealing generally.]—*See Sub-sect. 7, post.*

Time for petition to enter cross appeal.]—*See Sub-sect. 4, post.*

B. Grounds for granting or refusing.

365. Appeal disallowed in lower court—By reason of insufficiency of security tendered.]—The ct. below at the Mauritius is the sole judge of the sufficiency of the security to be given for the due prosecution of an appeal. Where that ct. has refused to allow an appeal on account of the insufficiency of the security tendered, the Privy Council will not allow one to be instituted.—*CAMBERNON v. EGROIGNARD & SOUBRIE* (1830), 1 Knapp, 251; 12 E. R. 314, P. C.

Annotation.—*Reid. Laing v. Ingham* (1839), 3 Moo. P. C. C. 26.

366. Appellant not within jurisdiction when judgment given—No notice of proceedings—Nor representative within jurisdiction.]—Upon a petition stating that a party against whom a decree had been pronounced by the Supreme Ct. of Newfoundland, was at the time resident in England & had no representative within the Island, nor notice of proceedings against him; the Judicial Committee gave leave to appeal upon terms; notwithstanding that he had not asserted an appeal within fourteen days from the final

PART X. SECT. 3, SUB-SECT. 1.—A. (c).

361 i. After time limited—By Orders in Council.]—The period allowed by Orders in Council, within which to petition for leave to appeal to the

Privy Council, is three lunar months.—*TERRY v. HOSKING* (1854), 2 Legge, 819.—**AUS.**

v. Filing petition within specified time—Actual application after.]—A petition for leave to appeal was filed

within the specified time after the judgment complained of, but the application in ct. was not made until after such time:—*Held*: the application was not out of time.—*BARKLEY v. BANK OF NEW SOUTH WALES* (1879), 2 N. S. W. W. N. 66.—**AUS.**

decree as required by the Charter of Justice of Newfoundland.—*HENDERSON v. HENDERSON* (1843), 4 Moo. P. C. C. 259; 13 E. R. 301, P. C.

367. Issue of fact only involved—Four verdicts against appellant.]—Application was made for leave to appeal from an order of the Supreme Ct. at Van Dieman's Land, refusing a fourth new trial of an action of trover, the subject-matter of which amounted to £970 :—*Held* : as the Charter of Justice limited the right of appeal to £1,000, & as, upon the merits, it was a mere question for a jury who had already found four times against petitioner, the application must be refused.—*Re SHERWIN* (1844), 4 Moo. P. C. C. 311; 13 E. R. 323, P. C.

368. —.]—The High Ct., acting regularly within its jurisdiction, suspended a pleader from practice for misconduct. The Judicial Committee, not being prepared to say, from the materials before it, that the High Ct.'s conclusion on a pure question of fact was wrong, refused to grant special leave to appeal. It would not have followed, even if more doubt had been entertained on such a question, that an appeal would have been granted against judges so acting.—*Re QUARRY* (1879), L. R. 7 Ind. App. 6, P. C.

369. —.]—*CANADA CENTRAL RY. Co. v. MURRAY*, No. 355, *ante*.

370. — Decision thereon clearly wrong.]—The Judicial Committee will not grant special leave to appeal from a requisitioning order made by the judge of the Prize Ct. under Prize Ct. Rules, Ord. 29, it not being disputed that the goods were urgently required for the prosecution of the war, unless, in their lordships' opinion, the judge, in determining that there was cause for investigation so that an immediate release to the claimant would be improper, applied the wrong principles or came to an obviously erroneous decision. Special leave to appeal was refused without deciding whether there was an appeal as of right.—*THE CANTON*, [1917] A. C. 102; 86 L. J. P. 30, 115 L. T. 815; 33 T. L. R. 65; 13 Asp. M. L. C. 565, P. C.

371. Absence of final judgment—Judgment suspended in lower court.]—A bill of indictment for libel was found at the assizes held for the County of C., in Jamaica. The prosecution was a private one. The indictment was afterwards removed by *certiorari* to the Supreme Ct. of Jamaica, & tried on the civil side of that ct., when a verdict of guilty was found. Upon motion for arrest of judgment, the Supreme Ct. suspended judgment, pending an application to the Queen in Council upon certain grounds raised :—*Held* : the petition for leave to appeal must be dismissed & the ct. would not interfere nor give any opinion on the merits of the case.

PART X. SECT. 3, SUB-SECT. 1.—B.

367 i. Issue of fact only involved—Only small amount in dispute—No question of general importance.]—Leave to appeal will not be granted where the judges in the cts. below differed radically on the facts, where only a small amount is involved, & where no question of general importance necessarily arises.—*RICHARDSON & SONS v. BEAMISH* (1915), 8 W. W. R. 109.—CAN.

371 i. Absence of final judgment.]—A. moved for leave to appeal to the Privy Council from the decision of the Full Ct. on a special case :—*Held* : as it was doubtful whether the decision was final or not, & as an appeal therefrom lay to the High Ct., leave to

appeal to the Privy Council was refused. *Semble* : such decision is not a final judgment within Order in Council of Oct. 18, 1909, cl. 2.—*Re TRUST & AGENCY Co. of AUSTRALIA*, [1910] S. R. Q. 320.—AUS.

371 ii. —.]—The absence of a formal judgment on record will not prevent the judicial committee of the Privy Council from entertaining an appeal.—*ROBINSON v. R.* (1865), 5 Nfld. L. R. 118.—NFLD.

372 i. Appeal abandoned.]—Appl. obtained leave to appeal Dec. 1896. Several extensions of time for lodging transcript were given, & on Sept. 8, 1897, a peremptory order was made for lodgment of transcript on Sept. 20; it was so lodged. No application was made, for the final order for leave to

Qu. : whether, upon a record so framed, in the absence of a final judgment, an appeal will lie.—*Re LÉVIEN* (1855), 10 Moo. P. C. C. 31; 11 E. R. 400, P. C.

372. Appeal abandoned.]—In circumstances showing conflicting & opposite decisions by the Sudder Ct. upon the same question at issue between the same parties, an appeal treated under 8 & 9 Vict. c. 30, s. 2, as abandoned for non-prosecution, was restored upon terms of paying costs & undertaking to lodge cases forthwith & to lodge security or a bond in England to the amount of £500. Where an appeal has been treated as abandoned under the above sect., their Lordships have no power to grant leave to institute a new appeal, only a discretion to allow the original appeal to be restored.—*HURROOONDRÉE DEBIAU (RANEE) v. PRAN KISHEN SING (RAJAH)* (1857), 11 Moo. P. C. C. 152; 6 Moo. Ind. App. 491; 11 E. R. 653, P. C.; *subsequent proceedings*, 11 Moo. P. C. C. 301, P. C.

373. Appeal grounded on mere formal defect in procedure.]—The Judicial Committee will not advise Her Majesty to grant leave to appeal to a party who resists a claim, not on the ground of the merits of his case, but on the ground of a mere formal defect in procedure on the part of claimant.—*Ex p. KENNINGTON* (1862), 8 Jur. N. S. 1111, P. C.

374. Appeal out of time—By reason of alteration in practice by lower court.]—Pending proceedings before the High Ct. on an application for a review of judgment, that ct. altered the then prevailing practice of permitting an appeal within six months from the date of the judgment allowing or refusing a review. In such circumstances, the six months prescribed by the Ord. in Council of Apr. 16, 1838, from the date of the decree having expired, special leave to appeal from the original decree & the ord. refusing a review was allowed.—*NOGENDER CHUNDER GHOSE v. MAHOMED ENSUFF* (1868), 12 Moo. Ind. App. 107; 37 L. J. P. C. 16; 20 E. R. 281, P. C.

375. Matter not strictly appealable.]—Where a matter has been referred by Her Majesty to the Judicial Committee which is not strictly an appealable grievance, their Lordships may, under the reservations contained in Judicial Committee Act, 1833 (c. 41), advise Her Majesty to grant petitioner leave to appeal.—*MORGAN v. LEECH* (1841), 2 Moo. Ind. App. 428; 3 Moo. P. C. C. 368; 6 Jur. 225; 18 E. R. 362, P. C.

Annotation :—*Reid*, *Cremidi v. Parker, The Aspasia* (1857), 11 Moo. P. C. C. 79.

376. Order only repetition of order from which appeal out of time.]—(1) The Judicial Committee will not allow an applt. who is out of time for appealing against an order to make a fresh application for the same thing to the ct. below in order

appeal, within the proper time :—*Held* : the appeal must be deemed abandoned.—*ALLIANCE CONTRACTING Co. v. RUSSELL* (1898), 23 V. L. R. 515.—AUS.

374 i. Appeal out of time.]—Leave may be refused on the ground of the application being too late.—*TERRY v. HOSKING* (1854), 2 Legge, 819.—AUS.

s. Where error in matter of law.]—When it manifestly appears that the ct. below has erred in a matter of law leave will be given, though it will be refused, even in such case, if it appears that the ct. below has decided the case independently of any point of law upon a particular view of the facts.—*NEW BRUNSWICK RY. Co. v. McLEOD* (1882), *Cass. Dig.* 644.—CAN.

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to bring himself within time for appealing against the second order.

(2) Where there has been great delay on the part of applt. in the assertion of his alleged rights, & he has neglected to bring all the facts known to him properly before the ct. below, the Judicial Committee will not extend the time for appealing.—*GRIEVE v. TASKER*, [1906] A. C. 132; 75 L. J. P. C. 12; 94 L. T. 115, P. C.

377. Court applying wrong principles.]—THE CANTON, No. 370, ante.

Prize appeals generally.]—See PRIZE LAW & JURISDICTION.

Appeals from courts outside United Kingdom—Amount below appealable value.]—See DEPENDENCIES, COLONIES & BRITISH POSSESSIONS.

—Appeal involving matter of public interest or important question of law.]—See DEPENDENCIES, COLONIES & BRITISH POSSESSIONS.

Criminal matter—From consular courts.]—See No. 958, post.

—From other courts outside United Kingdom.]—See DEPENDENCIES, COLONIES & BRITISH POSSESSIONS.

Petition for leave to appeal in formâ pauperis.]—See Sub-sect. 14, post.

Petition to enter cross-appeal.]—See Sub-sect. 4, post.

C. On What Terms granted.

378. General rule.]—Where this ct. grants leave to appeal, under the general jurisdiction of the Queen in Council, it will impose such terms upon the party applying as the special circumstances of the case require.

An appeal was admitted from an order confirming the report of comrs. in a partition suit, although the appealable value was under the amount prescribed by the Ord. in Council of Apr. 10, 1838. Petitioner had offered to compensate deft., if the report of the comrs. was varied. The Judicial Committee, in granting leave to appeal, put Petitioner upon terms of lodging in the Council office, within four months, a certificate of recognisance to the Queen, in the sum of £1,500, for such compensation & costs as might be awarded.

—*RE SIBNARAIN GHOSE* (1853), 8 Moo. P. C. C. 276; 5 Moo. Ind. App. 322; 14 E. R. 106, P. C.; *subsequent proceedings, sub nom. SIBNARAIN GHOSE v. HULLODHUR DOSS* (1855), 9 Moo. P. C. C. 354, P. C.

379. Giving security—For what amount.]—*Semble*: the Privy Council will not direct a greater security to be entered into by an appet. on granting him leave to appeal, than it had been the practice to require in the colony although the instructions to the Governor empowered him to require greater.—*CRAIG v. SHAND* (1830), 1 Knapp, 253; 12 E. R. 315, P. C.

380. —.]—The Supreme Ct. at the Mauritius refused to allow an appeal to the Queen in Council from a definitive sentence in a suit for

a divorce *a vinculo*, except upon terms of giving security in the aggregate sum of £1,200 sterling, for performance of the order in Council to be made on appeal, & the costs incurred thereby. On petition, the Judicial Committee granted leave to appeal, fixing the security at £300.—*HULM v. HULM* (1813), 4 Moo. P. C. C. 262; 13 E. R. 302, P. C.

381. —.]—*Re MUSHADEE MAHOMED CAZUM SHERAZEE*, No. 361, ante.

382. —.]—*Re SIBNARAIN GHOSE*, No. 378, ante.

383. —.]—(1) Where a decree had been made that accounts should be opened & referred to the master, deft. did not immediately appeal from this interlocutory decree, but proceeded in the master's office in respect of the matters included in the accounts; but before the general report was made by the master, he appealed from such interlocutory decree to England. In reversing such decree, the Judicial Committee ordered him to pay the costs of the proceedings in the master's office, & remitted the cause to the ct. below, with directions, that the costs payable to deft. upon the dismissal of the bill, & the costs payable by him consequent upon his proceeding in the master's office, should be set off, the one against the other, & the balance paid to the party entitled to same.

(2) Leave to appeal on an *ex p.* application was, in special circumstances, granted upon terms of applt. prosecuting the appeal & giving security for £500. No step was, however, taken by applt. to perfect the security or prosecute the appeal. Resp., on being served with the order admitting the appeal, filed a counter-petition to revoke the leave granted to appeal. The Judicial Committee, in the circumstances, there having been great delay, made an order putting applt. upon terms of lodging his petition of appeal within six weeks, or the appeal to stand dismissed, & enlarged the amount of the recognisance to £1,000 to cover the expenses occasioned by the proceedings in the master's office, reserving the costs of the application to revoke the leave to appeal, to the hearing.—*McKELLAR v. WALLACE* (1853), 8 Moo. P. C. C. 378; 5 Moo. Ind. App. 372; 1 Eq. Rep. 309; 22 L. T. O. S. 309; 11 E. R. 141, P. C.

Annotat. Generally, Mentd. Perry v. Atwood (1856), 6 E. & B. 691.

384. —.]—(1) Appeal allowed from a sentence of the Lieutenant-Governor of the Island of Helgoland, the sentence having been passed without hearing applt.'s case.

(2) Execution of sentence ordering a distribution of the property in dispute ordered to be stayed, pending the appeal.

(3) Security in the sum of £100 ordered to be given in the Island by petitioner for resps.' costs, & also in the Privy Council office, for costs of copying transcript & printing appendix to applt.'s case.—*SIEMENS v. BUFE (HEIRS OF)* (1856), 11 Moo. P. C. C. 62; 14 E. R. 618, P. C.

385. —.]—*CREMIDI v. PARKER, THE ASPASIA*, No. 326, ante.

386. —.]—A question arose upon the

PART X. SECT. 3, SUB-SECT. 1.—C.

378 i. General rule—Security for costs cannot be dispensed with.]—In giving leave to appeal to the Privy Council the ct. below has no jurisdiction to dispense with security for costs.—*GOODMAN v. BOULTON* (1868), 5 W. W. & A B. 86.—**AUS.**

379 i. Giving security—For what amount.]—A petition for leave to appeal to the Privy Council cannot be granted unless sufficient security is offered.—*PALLISER v. CONSUMERS'*

CORDAGE CO. (1905), 7 Q. P. R. 299.—**CAN.**

379 ii. —.]—Where the security required upon an appeal to the Privy Council is given by payment of money into ct. instead of by a bond in the penal sum of \$2,000 as provided by rules of ct. the sum paid in must not be less than \$2,000.—*FLORENCE MINING CO. v. COBALT LAKE MINING CO.* (1909), 19 O. L. R. 342; 14 O. W. R. 507.—**CAN.**

379 iii. —.]—*Costs increased*

*owing to length of proceedings.]—*A sum ordered to be deposited for security of resps. costs may be increased on account of the length of the transcript of the proceedings.—*BOSWELL v. KILBURN, C. R.*, [1860] A. C. 285.—**CAN.**

379 iv. —.]—*For what costs.]—*The costs for payment of which security must be given are all those previously incurred & to be incurred by reason of the appeal.—*HEALEY v. BANK OF NEW SOUTH WALES* (1899), 24 V. L. R. 733.—**AUS.**

construction of a Proclamation made under a colonial Act respecting the formation of a municipality, affecting the government of the colony & the appeal sought only a construction of the Proclamation:—*Held*: although the time limited for appealing had expired, & as the appeal was only admitted to determine such construction, leave to appeal would be granted upon the following terms: (a) that it was to be without prejudice to a judgment already existing in resp.'s favour arising out of the same transaction; (b) that a security bond should be executed by petitioners to indemnify resp., in any event in which the appeal was determined, his expenses & costs of appeal.—*GRAHAM v. BERRY* (1865), 3 Moo. P. C. C. N. S. 207; 16 E. R. 78, P. C.

Annotation:—*Mentd.* Bateman v. Boynton (1865), 35 L. J. Ch. 18.

387. ——— **Costs & damages awarded by jury.**—(1) In granting special leave to appeal from a judgment in an action in which damages were awarded, the Judicial Committee imposed terms on petitioner, in addition to giving security for costs, to find security for the amount of the damages awarded by the jury, & upon the compliance of such terms, ordered execution of the judgment of the ct. below to be stayed.

(2) The fact that no application was made in the ct. below for a new trial is no objection to the hearing of the appeal having been made & granted & counsel having been then heard on both sides.—*STACE v. GRIFFITH* (1869), L. R. 2 P. C. 420; 6 Moo. P. C. C. N. S. 18; 20 L. T. 197; 16 E. R. 633, P. C.

Annotations:—*Generally*, *Mentd.* Hennessy v. Wright (1888), 21 Q. B. D. 509; Chatterton v. Secretary of State for India in Council (1895), 14 R. 504.

388. ——— *ante*.—*LYALL v. JARDINE*, No. 354,

389. ——— **Within specified time—Cannot be waived by consent—Or subsequent appearance of respondent.**—Ord. in Council of June 20, 1831, Art. 25, r. 11 (Stat. R. & O. 1899, pp. 1672, 1674), for allowing appeals from British Guiana, Trinidad, & St. Lucia, if the security given is completed within three months from the date of the petition for leave to appeal, is prohibitory on the ct., & cannot be waived by the consent or subsequent appearance of resp. to the appeal.

The security in this cause was not given until four months after leave to appeal had been obtained, but no petition was presented by resp. to dismiss the appeal, nor was any appeal noted against applt. proceeding to execute his part of the sentence, though that proceeding was objected to by resp. Resp. had, however, appeared to the appeal, & lodged his case:—*Held*: applt. must have been led to suppose that any objection on the score of irregularity was waived; & though the ct. were of opinion that the order made by the ct. below, allowing the appeal, was, for want of the

security being completed, irregular, & could not be cured by any waiver or implied consent on the part of resp., yet this would be a fit case to recommend the allowance of the appeal, upon a petition presented for that purpose.—*RETEMeyer v. OBERMULLER* (1838), 2 Moo. P. C. C. 93; 12 E. R. 938, P. C.

Annotation:—*Consd.* Sauvageau v. Gauthier (1871), L. R. 5 P. C. 191.

390. ——— **Form of bond—Time for objecting to.**—*POWELL v. WASHBURN*, No. 429, *post*.

391. ——— **To whom security to be delivered—Officer of court from which appeal comes—Not respondent.**—Where a municipality is resp. to an appeal to Her Majesty in Council the condition that security shall be given in bond, mortgage or personal recognisance, is sufficiently complied with by delivery of the bonds to the prothonotary & not to the municipality.—*MELBOURNE TRAMWAY & OMNIBUS CO. v. FITZROY CORPN.*, [1901] A. C. 153; 70 L. J. P. C. 1; 83 L. T. 112; 17 T. L. R. 30, P. C.

392. ——— **Abandonment of appeal—Petition for vacation of recognisance.**—Recognisance entered into to abide the determination of an appeal vacated upon petition of applt., upon the abandonment of the appeal.—*REED v. SREEMUTTY GOURMONEY DAHEE* (1857), 11 Moo. P. C. C. 151; 6 Moo. Ind. App. 190; 14 E. R. 652, P. C.

393. **Payment of costs.**—Leave to appeal granted, on payment of costs, from an order of the Sudder Ct. at Bombay, decreeing interest upon the amount awarded by the judgment of the ct., applt. having failed to apply to the ct. in India within six months, as required by the Ord. in Council of Apr. 10, 1838. *KIRKLAND v. MODER PESTONJEE KHOORSEEDJEE* (1813), 3 Moo. Ind. App. 220; 18 E. R. 181, P. C.

Annotation:—*Mentd.* Rodger v. Comptoir D'Escompte de Paris (1871), 7 Moo. P. C. C. N. S. 314.

394. ——— **To enable respondent to appear on appeal.**—(1) The Supreme Ct., in overruling objections to the jurisdiction of the ct., refused leave to appeal, the subject-matter of the action being trifling, & under the amount required by the rules of the Privy Council. Upon a petition for leave to appeal:—*Held*: leave must be granted but upon terms, of applts. paying resp.'s costs of the appeal, to enable him to appear, to prevent the question being argued *ex p.*

(2) A plea in abatement to the jurisdiction of the ct. must point out another ct. before which the matter is cognisable. A plea in bar, if well founded, is sufficient without pointing out the ct. in which the suit ought to have been brought.—*SPOONER v. JUDDOW* (1850), 6 Moo. P. C. C. 257; 4 Moo. Ind. App. 353; 13 E. R. 682, P. C.

Annotations:—*Is to* (1) *Refd.* *GRAHAM v. BERRY* (1865), 3 Moo. P. C. C. N. S. 207. *Generally*, *Mentd.* Secretary of State in Council of India v. Kamachee Boye Sahaba (1859), 7 Moo. Ind. App. 476; Sinclair v. Broughton & Government of India (1882), 47 L. T. 170.

389 i. ——— **Within specified time—Whether time can be extended.**—A judge cannot under 15 Vict. (No. 10), s. 34, enlarge the time for giving security for costs in an appeal to the Privy Council unless the application therefor be made before the expiration of the original time prescribed. And under the Orders in Council there is no power to enlarge the time for giving security for costs at whatsoever time the application be made.—*PEARSON v. RUSSELL* (1889), 15 V. L. R. 89.—*AUS.*

389 ii. ——— *ante*.—A colonial ct. cannot extend the time limit within which security for costs must be completed under the Royal instructions governing appeals to the Privy Council.

—*CHAN WO v. CHAN TAM* (1908), 3 Hong Kong L. R. 179.—*HONG KONG.*

389 iii. ——— **Failure to deposit security.**—Six months having elapsed without applt. having lodged the required security, resp. applied to dismiss the appeal for non-performance of that condition. As it appeared that applt.'s agent was in daily expectation of funds from India, the case was, on applt. paying the costs of the day, ordered to stand over for three months, for applt. to perform the condition; in failure thereof the appeal to stand dismissed.—*HURROSOONDREE DIBLAH (RANEE) v. PRAN KISHEN SINGH (RAJAH)* (1857), 7 Moo. Ind. App. 16.—*IND.*

t. ——— **Where two sets of respondents—Each entitled to separate bond.**—Where applts. are ordered to give security for the costs of an appeal to the Privy Council, & there are two sets of resps. entitled to be separately represented, each set of resps. is entitled to a separate bond.—*ECULES v. MILLS* (1895), 14 N. Z. L. R. 395.—*N.Z.*

u. **Undertaking for security of mesne profits—& delivery of property without waste.**—Pltf. purchased land sold in execution of a decree, & was put in possession. The sale was set aside, & he was ousted. He preferred an appeal to the Privy Council & the High Ct. directed that security be given for the mesne profits & the due

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395. — Appellant colonial Attorney-General.]—Several actions, in the nature of Petitions of Right, were brought against the Crown, in Victoria, under Colonial Laws Validity Act, 1865 (c. 63), & judgments obtained against the Crown; but the Supreme Ct. of that colony refused leave to appeal to England, in some cases, because the amount recovered was under £500, the appealable value prescribed by the Order in Council of June 9, 1860, & in other cases, except upon terms of the A.-G. in the colony paying the amount of the verdicts with costs. In giving leave to appeal, upon special petition for that purpose, the Judicial Committee refused to sanction the terms imposed by the Supreme Ct. on the A.-G. of finding security for costs of the appeals, & admitted the appeals without security being given. The appeals were directed to be consolidated & heard as one cause.—*Re A.-G. FOR VICTORIA* (1866), L. R. 1 P. C. 147; 3 Moo. P. C. C. N. S. 527; 16 E. R. 200, P. C.

396. — In any event—If so directed.]—Special leave to appeal granted on the terms of applt.'s submission to pay the costs of appeal in any event, if so directed.—*MONTREAL GAS CO. v. CADIEUX*, [1898] A. C. 718; 67 L. J. P. C. 115, P. C.

397. Lodgment of printed case within specified time.]—On special petition, leave to appeal was granted by the Judicial Committee upon terms of applt. lodging his printed case within a given time, or the appeal to stand dismissed.—*D'ORLIAC v. D'ORLIAC* (1844), 4 Moo. P. C. C. 374; 13 E. R. 347, P. C.

Annotation:—Folld. Shire v. Shire (1845), 5 Moo. P. C. C. 81.

398. Undertaking not to disturb possession or title of property in dispute.]—Re MUSHADEE MAHOMED CAZUM SHERAZEE, No. 361, *ante*.

399. Consent to abide by result of appeal.]—Re MUSHADEE MAHOMED CAZUM SHERAZEE, No. 361, *ante*.

400. — Other appeals pending involving same question of law.]—Five separate suits were brought by the same plff. against the same defts. in which the same question of law was raised. The amount involved in each suit was under the appealable value, although in the aggregate the amounts claimed exceeded that sum. Leave to appeal in the suits was granted upon the undertaking that the parties consented within two months, by a proceeding before the Sudder Ct., to abide by the decision of the Privy Council in the first appeal, as governing the four other appeals, when the registrar of the Sudder Ct. was to transmit only the transcript of the first suit; otherwise the five transcripts to be remitted in the ordinary course.—*GOPAL LALL THAKOOR (BAHOO) v. TELUK CHUNDER RAI* (1860), 7 Moo. Ind. App. 548; 19 E. R. 415, P. C.

Annotation:—Refd. Ko Khine v. Snadden (1868), 5 Moo. P. C. C. N. S. 67.

401. Lodgment of petition within specified time.]—MCKELLAR v. WALLACE, No. 383, *ante*.

402. Appeal to be without prejudice to existing

delivery of the property without waste in the event of the appeal being successful. Defts. furnished security, & executed a document under which plff., who had succeeded in the Privy Council, now sued to enforce his rights.—*Held*: the order requiring security to be furnished was not *ultra vires*, & the instrument was enforceable.—*NARAYAN CHETTI v. ARUNACHELLAM CHETTI* (1895), 1 L. R. 19 Mad. 140.—IND.

a. Surety may dispute validity of

security bond notwithstanding allowance of appeal.]—*GIRINDRA NATH MUKERJEE v. BEJOY GOPAL MUKERJEE* (1898), 1 L. R. 26 Calo. 246; 3 C. W. N. 84.—IND.

b. "On usual terms"—Meaning of.]—The expression "on the usual terms" used when granting leave to appeal to the Privy Council means, where it is only a question of costs, that they are to be paid, & security for a refund given.—*O'BRIEN v. STEAD* (1894), 13 N. Z. L. R. 81.—N.Z.

judgment—In respondent's favour.]—GRAHAM v. BERRY, No. 386, *ante*.

403. Questions to be argued limited.]—Special leave to appeal, the sum involved being below the appealable amount, allowed, on the ground that the question involved the construction of a colonial Act which affected the interests of a large class in the colony for which the Act was passed. In granting the special leave the Judicial Committee limited the appeal to the construction of the colonial Acts.—*BROWN v. McLAUGHAN* (1870), L. R. 3 P. C. 458; 7 Moo. P. C. C. N. S. 306; 17 E. R. 117, P. C.

D. The Order.

404. Construction of—Application for leave to appeal from four judgments—Whether order limited to two judgments only.]—(1) In a question relating to boundaries of land, the Judicial Committee on a review of the evidence, reversed the concurrent decrees of the ct. of first instance & the Sudder Ct., but without costs.

(2) On special application for leave to appeal from two decrees of the Sudder Ct., & also two decrees made by the ct. of first instance, the order in Council made on the leave given was confined to the Sudder Ct. decrees:—*Held*: such order was for the purpose of the hearing of the appeal to be considered as embracing all four decrees.

The order of the Judicial Committee really was, to grant leave to appeal as prayed, but inadvertently it was drawn up in words which, construed literally, would limit the appeal to the decrees of the Sudder Ct. only; but for reasons to be stated presently, it must be taken that there was leave to appeal against the four decrees. The first objection was in the nature of a preliminary one; that the appeal allowed was from the two decrees of the Sudder Dewanny Adawlut only. Their Lordships observed that, if this was the correct construction of the words of the order, a view which, however, they did not entertain, it would no doubt be amended on their recommendation to Her Majesty to that effect; a recommendation which they should, in such a case, think it their duty to make (*per Cur.*).—*RAM CHUNDER DUTT v. CHUNDER COOMAR MUNDUL* (1869), 13 Moo. Ind. App. 181; 20 E. R. 519, P. C.

405. Amendment of—Order ambiguous.]—RAM CHUNDER DUTT v. CHUNDER COOMAR MUNDUL, No. 404, *ante*.

Rescission of.]—See Sub-sect. 1, E.,

E. Rescission of.

406. Delay in perfecting security or prosecuting appeal.]—MCKELLAR v. WALLACE, No. 383, *ante*.

407. Leave obtained ex parte—Counter-petition to dismiss.]—(1) If leave to appeal is obtained *ex p.*, resp. may, as a matter of course, present a counter-petition to dismiss.

(2) Where an appeal has been granted *ex p.* upon an allegation unfounded in fact, the Judicial Committee will refuse to hear the case, & dismiss

PART X. SECT. 3, SUB-SECT. 1.—E

a. *Whether jurisdiction to discharge order.]*—Defts. obtained an order for liberty to appeal to the Privy Council, from a decision of the Supreme Ct. & deposited £500 to abide the appeal under the order. Defts. moved to rescind the order.—*Held*: the ct. had no jurisdiction to interfere & rule discharged but without costs.—*BYRNES v. CLOUGH* (1865), 2 W. W. & A. B. 17.—AUS.

d. —.]—Where leave has been

the appeal with costs.—*SIRNARAIN GHOSE v. HULLODHUR DOSS* (1855), 9 Moo. P. C. C. 354; 6 Moo. Ind. App. 207; 14 E. R. 332, P. C.

Annotation.—*Generally*, *Reid*, *Cremidi v. Parker*, *The Aspasia* (1857), 11 Moo. P. C. C. 79.

408. —.]—Special leave to appeal having been given on an *ex p.* application, & upon an erroneous statement contained in the petition for leave:—*Held*: the order allowing such leave must be discharged with costs.—*BULKELEY v. SCUTZ* (1870), L. R. 3 P. C. 196; 6 Moo. P. C. C. N. S. 481; 16 E. R. 807, P. C.

409. Want of *uberrima fides*—Material misstatement or concealment of fact.]—*SIRNARAIN GHOSE v. HULLODHUR DOSS*, No. 407, *ante*.

410. —.]—(1) An order in Council made upon an *ex p.* application granting special leave to appeal upon an allegation as to the value of the property in dispute, rescinded, there being omissions from the petition of proceedings in the suit, which showed the true value of the property.

(2) In ordinary circumstances an order in Council obtained upon an *ex p.* petition, which omitted to state the true facts, will be discharged with costs, but if there has been laches in applying to discharge the order on the part of resp. no costs will be given.—*MOHUN LALL SOOKUL v. BEHEE DOSS* (1861), 8 Moo. Ind. App. 193; 19 E. R. 503, P. C.; *subsequent proceedings*, 8 Moo. Ind. App. 492, P. C.

Annotations.—*Reid*, *Mussoorie Bank v. Raynor* (1882), 7 App. Cas. 321; *Toronto Ry. v. Toronto City*, [1920] A. C. 426.

411. —.]—*BULKELEY v. SCUTZ*, No. 408, *ante*.

412. —.]—Where it appeared that the petition on which special leave to appeal was granted contained a material misstatement of fact, their Lordships refused the costs of the appeal. There must be *uberrima fides* in applying for such leave, otherwise an order granting it will be rescinded on application by resp. at any time before the appeal has been actually entered upon. If such misstatement should appear, even at the latest stage, to have been made with the intention to deceive, the appeal will be dismissed.—*RAM SARUK BOSE v. MONMOHINI DOSSEE* (1874), L. R. 2 Ind. App. 71, P. C.

Annotation.—*Reid*, *Mussoorie Bank v. Raynor* (1882), 7 App. Cas. 321.

413. —.]—No intention to deceive.]—A petition for special leave to appeal stated correctly two valid grounds for granting same, but contained misstatements of fact which affected a third ground relied upon by petitioner:—*Held*: any such petition is liable at any time to be rescinded with costs if it contains any misstatement or any concealment of facts which ought to be disclosed, but as there was no intention to mislead, the appeal would be heard & allowed, but without costs.—*MUSOORIE BANK, LTD. v. RAYNOR* (1882), 7 App. Cas. 321; 51 L. J. P. C. 72; 40 L. T. 632; 31 W. R. 17, P. C.

Annotations.—*Reid*, *Toronto Ry. v. Toronto City*, [1920] A. C. 426. *Mentd.* *Re Adams & Kensington Vestry* (1884), 27 Ch. D. 394; *Re Hamilton*, *Trench v. Hamilton* (1895), 43 W. R. 577; *Re Atkinson*, *Atkinson v. Atkinson* (1911), 80 L. J. Ch. 370.

414. —.]—It is incumbent upon petitioner in any case in which special leave is applied for to see that the facts are correctly brought to the notice of the Judicial Committee, & if at any stage it is found that there has been failure to do so, the leave may be rescinded.—

TORONTO RY. CO. v. TORONTO CITY, [1920] A. C. 426; 89 L. J. P. C. 81; 122 L. T. 635, P. C.

Compare No. 354, *ante*.

415. —.]—Material alteration of law after action commenced—Known to appellants.]—Appls. obtained from the Judicial Committee special leave to appeal from a judgment of the Supreme Ct. of Canada, without calling attention to a statute of the Province of Saskatchewan passed after the commencement of the action, but being material to the question whether special leave should be granted. Counsel for petitioners did not know of the statute but appls. themselves, from the nature of their business, must have done so. Resp., after the appeal was in the list for hearing, petitioned that the order granting special leave might be rescinded:—*Held*: the granting of special leave to appeal should be rescinded & the appeal was dismissed with costs.—*EMERSON-BRANTINGHAM IMPLEMENT CO. v. SCHOFIELD*, [1920] A. C. 415; 89 L. J. P. C. 63; 122 L. T. 632, P. C.

416. Leave obtained after notice to respondent.]

—*CREMIDI v. PARKER*, *THE ASPASIA*, No. 326, *ante*.

417. Abandonment of appeal.]—*REED v. SREEMUTTY GOURMONEY DABEE*, No. 392, *ante*.

418. Mistake—In calculation of appealable value.]—An order granting leave to appeal, obtained upon an *ex p.* application, founded on an allegation that the interest added to the principal sum recovered in an action on a policy, exceeded the sum of £500, the appealable value prescribed by the Lower Canada Act, 31 Geo. 3, c. 6, s. 30, was discharged upon petition of the Resps., showing that the calculation as to value was erroneous.—*QUEBEC FIRE ASSURANCE CO. v. ANDERSON* (1861), 13 Moo. P. C. C. 177; 15 E. R. 179, P. C.

419. Leave granted by colonial court—Under authority of colonial Act.]—On a petition to rescind leave to appeal granted by the Ct. of Q. B. in Lower Canada:—*Held*: Her Majesty in Council was not precluded from entertaining a petition to rescind leave to appeal, by the fact that leave to appeal was granted by a colonial ct. under the authority of a colonial statute.—*MACFARLANE v. LECLAIRE* (1862), 15 Moo. P. C. C. 181; 8 Jur. N. S. 267; 10 W. R. 324; 15 E. R. 462, P. C.

Annotations.—*Mentd.* *Re Marois* (1862), 15 Moo. P. C. C. 189; *Therberge v. Laundry* (1876), 25 W. R. 216; *Allan v. Pratt* (1888), 13 App. Cas. 780.

420. No real question to be tried.]—(1) Leave to appeal to the King in Council *in forma pauperis* is not of course, & ought not to be granted where it is made apparent that the proposed appeal is idle & frivolous. (2) An order in Council granting leave to appeal, rescinded on the petition of resp., on the ground that there was no real question to be tried.—*QUINLAN v. QUINLAN*, [1901] A. C. 612; 70 L. J. P. C. 122; 85 L. T. 360, P. C.

421. Discharge of order rescinding leave—When granted.]—Upon evidence taken in India showing the value of the property in dispute, an order in Council, which rescinded a previous order allowing special leave to appeal, on the allegation of the suppression of material facts as to the value, was discharged, & the appeal restored.—*MOHUN LALL SOOKUL v. BEHEE DOSS* (1861), 8 Moo. Ind. App. 492; 19 E. R. 617, P. C.; *sub nom.* *MOHUN LALL SOOKUL v. GOLUCK CHUNDER DUTT*, 7 Jur. N. S. 1217, P. C.

given to a party by the Ct. of Appeal to appeal from its decision to the Privy Council, the leave being given subject to the condition that the applt. duly

finds security for costs, & the applt. has performed that condition, the jurisdiction of such ct. over that appeal is gone, & it has no power on the ground

that the appeal has not been duly prosecuted to discharge the order made by it.—*LYANAR v. DUNLOP* (1907), 26 N. Z. L. R. 929.—N.Z.

Sect. 3.—Practice and procedure: Sub-sects. 2, 3 & 4.]

SUB-SECT. 2.—PREPARATION AND TRANSMISSION OF RECORD.

422. Transmission to registrar of Privy Council—Appeals consolidated—Transmission of records in every case dispensed with.]—Five suits involving the same question may be consolidated for the purpose of bringing up the amount to the minimum required for appeal. In such case, with consent of parties, the Privy Council will dispense with the transmission of the records in every case.—*Ex p. GOPAL LALL THAKOOR* (1860), 8 W. R. 221, P. C.

423. — No duty of registrar to give notice of arrival of record.]—*Re MUSSUMAT SURNO MOYEE (RANEE) & SHOSHEE MOHHEE BURMONIA, Ex p. KISTO NAUTH ROY*, No. 693, *post*.

424. Contents—Judge's reasons—Not mere statement of decision.]—It is the duty of a judge in India trying a suit to state, in his judgment, the grounds upon which he has arrived at the conclusion he has formed upon the evidence, & not simply to state, in a general manner, that a party was entitled, as such a course does not afford the appellate ct. the assistance it is bound to expect from the ct. below.—*KHAJAH MOHAMED GOUHUR ALI KHAN v. KHAJAH AHMED KHAN* (1863), 9 Moo. Ind. App. 508; 19 E. R. 829, P. C.

425. — Not stated publicly at hearing—Inclusion disapproved.]—Two of the judges in the ct. below dissented from the other judges, but did not express their reasons in ct. for disagreeing with the other judges. After an appeal was interposed to England, those judges prepared written judgments, which were transmitted to England, & first known at the hearing, as forming part of the printed record before the Judicial Committee:—*Held*: such course was improper & should be condemned, as the judges' opinions should have been stated publicly at the hearing in the ct. below, & not have been reserved to influence the decision of the ct. of appeal.—*BROWN v. GUGY* (1864), 2 Moo. P. C. C. N. S. 341; 10 L. T. 45; 10 E. R. 525; 12 W. R. 493; 15 E. R. 930, P. C.

Annotations:—Reid. Richer v. Voyer (1874), L. R. 5 P. C. 461. *Mentd. Bell v. Quebec Corp.* (1879), 5 App. Cas. 84.

426. — — — — —.]—The rule of 1845 requires the reasons given by the judges below to be communicated to the registrar of the Privy Council, & they should be stated publicly at the hearing, & not be reserved to influence the ct. of appeal.

In a case in which they were not so communicated, in consequence of having been destroyed by a fire, but a copy was afterwards irregularly sent to one of the parties to the appeal:—*Held*: they could not be looked at by the ct.—*RICHER v. VOYER* (1874), L. R. 5 P. C. 461; 30 L. T. 506; 22 W. R. 849, P. C.

Annotation:—Mentd. Cain v. Moon, [1896] 2 Q. B. 283.

427. — Voluminous & unnecessary accounts & receipts—Inclusion disapproved.]—(1) The practice of including in the transcript record prepared & printed in India, under the Ord. in Council of June 13, 1853, voluminous accounts & receipts, unnecessary to the question at issue, is condemned.

(2) Directions given in taxing costs to disallow

all expenses occasioned by the insertion in the transcript of such unnecessary matters.—*TARAKANT BANNERJEE v. PUDDOMONEY DOSSEE* (1866), 10 Moo. Ind. App. 476; 19 E. R. 1052, P. C.

428. — Appeal from order directing reformation of articles—Actual reformation required to appear on face of order.]—Before an appeal is presented to the Queen in Council in respect of an order directing the reformation of articles of charge or other pleadings, the actual reformation which appears to the judge to be required, should be made by him on the face of the order, so that on appeal the very passages omitted may be clearly brought under the judgment of the Judicial Committee.—*SHEPPARD v. BENNETT* (1872), L. R. 4 P. C. 371; 9 Moo. P. C. C. N. S. 119; 11 L. J. Eccl. 1; 26 L. T. 923; 20 W. R. 801; 17 E. R. 470, P. C.

Annotation:—Mentd. R. v. Canterbury Archbp. (No. 1) (1902), 71 L. J. K. B. 891.

Original documents.]—*See* Nos. 429–431, *post*.

429. When additional documents ordered to be transmitted—Not original documents—After refusal of lower court to transmit—Lower court court of error.]—(1) *Appl.*, in pursuance of the Canada Act, 34 Geo. 3, c. 2, s. 35, tendered his bond as security for the due prosecution of the appeal. The bond, though without sureties, & binding only on *applt.*, was, upon a rule to show cause, duly allowed. Pending the appeal *applt.* died, & same was duly revived against the exors. Application was made that the exors. should give proper & sufficient security, or the appeal stand dismissed:—*Held*: the allowance of the security in the ct. below precluded *resps.* from objecting now to the form of the bond, & their appearance to the order of *revivor* prevented the ct. from imposing terms on *applt.*

(2) The Ct. of Appeal in Upper Canada refused to order the Ct. of K. B. to send up the original papers & documents on the file of the ct., but not part of the record:—*Held*: the Ct. of Appeal was a ct. of error, & governed by same rules as prevail in cts. of error in England, & their decision was right.—*POWELL v. WASHBURN* (1838), 2 Moo. P. C. C. 109; 12 E. R. 979, P. C.

430. — — — — — Unless inspection & comparison necessary.]—Where the lower cts. had examined witnesses, & compared the handwriting of an instrument sued upon, with the handwriting of two other documents put in evidence & admitted to be genuine:—*Held*: the originals must be transmitted for the purpose of inspection & comparison at the hearing of the appeal from the judgment of the lower ct.—*M'CARTHY v. JUDAH* (1858), 12 Moo. P. C. C. 47; 14 E. R. 829, P. C.

Annotation:—Mentd. Venkataswara Yettlapah Naicker v. Alagoo Mootoo Servugaren (1861), 8 Moo. Ind. App. 327.

431. — — — — —.]—This ct. can only look to the record of proceedings transmitted by the ct. below. It will not receive shorthand writers' notes to impeach the accuracy of the judge's notes taken at the trial, to show that the evidence set forth in the transcript record was not exhibited, or that evidence had been given which had been omitted in the transcript.

A petition was presented by *applt.* impugning the correctness of the transcript record transmitted

PART X. SECT. 3, SUB-SECT. 2.

e. Transmission to registrar of Privy Council—Time for delivery may be extended.]—The time for delivering the transcript may, from time to time, be extended.—*MULHOLLAND v. SMITH* (1895), 21 V. L. R. 97.—**AUS.**

f. — Of record—Without usual fees—Appeal in forma pauperis.]—*DOMINION CARTRIDGE CO. v. MCARTHUR* (1901), 22 C. L. T. Occ. N. 5; 31 S. C. R. 392.—**CAN.**

427 i. Contents—Voluminous & unnecessary accounts & receipts—Inclusion disapproved.]—*THAKUR JAWAHIR SINGH*

v. LANGHMAN DAS (1905), 9 C. W. N. 745.—**IND.**

429 i. When additional documents ordered to be transmitted—Order made pending appeal—Submitting further points.]—*RATTAN KOER v. CHOTAY NARAIN SINGH* (1894), 1 L. R. 21 Cal. 476.—**IND.**

by the registrar, under the seal of the colonial ct., & praying for the transmission of the original documents adduced in evidence, the shorthand writers' notes of the evidence, judgments & observations of the judges of the ct. below, & for a fuller & more correct account by the judges of the oral evidence given at the trial:—*Held*: the application must be refused.—*STANFORD v. BRUNETTE* (1860), 14 Moo. P. C. C. 35; 15 E. R. 219, P. C.

432. — Documents not forming part of record.]—*POWELL v. WASHBURN*, No. 429, *ante*.

433. — Certified copy of.]—The letters of preference not forming part of the transcript, the hearing of an appeal was postponed, & an order was made for a certified copy to be transmitted by the Clerk of the Patents in Jamaica, to the Privy Council office.—*MASON v. A.-G. OF JAMAICA* (1843), 4 Moo. P. C. C. 228; 13 E. R. 289.

434. — Not shorthand writers' notes — To impeach judge's notes.]—*STANFORD v. BRUNETTE*, No. 431, *ante*.

435. Delay in transmitting documents — Peremptory order to lower court to transmit forthwith.]

—(1) In a case of great delay by the officers of the Sudder Dewanny Adawlut, at Calcutta, in not forwarding certain depositions filed in the cause, which had been omitted from the transcript forwarded to England, the Judicial Committee will peremptorily order the Sudder Dewanny Ct. forthwith to transmit the omitted evidence to England.

(2) Pending the appeal to England, applt. died, & the Sudder Ct. made an order substituting one of resps. in his stead as applt. *Seemle*: it is not competent to the other resps. to object to such order at the hearing of the appeal, the proper course being to move the Sudder Ct. to discharge such order.—*KASI PERSAD NARAIN (BABOO) v. KAWALBASI KOOR (MUSSUMAT)* (1851), 5 Moo. Ind. App. 116; 18 E. R. 851, P. C.

436. No judgment nor reasons therefor transmitted — Newspaper report agreed upon.]—Where no reasons for the judgment accompanied the judge's notes, & no copy of the judgment was furnished, a report of the case in a colonial newspaper was agreed upon by both sides as correct, & referred to in the argument.—*RODGER v. COMPTOIR D'ESCOMPTE DE PARIS* (1869), L. R. 2 P. C. 393; 5 Moo. P. C. C. N. S. 538; 38 L. J. P. C. 30; 21 L. T. 33; 17 W. R. 468; 3 Mar. L. C. 271; 16 E. R. 618, P. C.

Annotations:—*Mentd.* Chartered Bank of India, Australia & China v. Henderson (1874), L. R. 5 P. C. 501; The Emilien Marie (1875), 41 L. J. Adm. 9; Leask v. Scott (1877), 2 Q. B. D. 376; *Re Love, Ex p. Watson* (1877), 5 Ch. D. 35; Kendal v. Marshall Stevens (1883), 11 Q. B. D. 356.

SUB-SECT. 3.—PETITION OF APPEAL.

Necessity for lodgment of—To give Judicial Committee jurisdiction.]—*See* Nos. 321–326, *ante*.

Withdrawal of—Necessity for petition.]—*See* No. 392, *ante*.

437. — Party to appeal not sui juris — Necessity for certificate that withdrawal for benefit of such party.]—The Judicial Committee being assured by counsel at the bar of their Lordships' Board that the terms upon which it had been agreed that an appeal should be withdrawn were

for the benefit of a minor, party thereto, & having before them the written opinion of counsel, who appeared in India for the minor, to the same effect, advised His Majesty that leave should be granted to withdraw the appeal upon the proposed terms.—*SAKINBAI v. SHRINIBAI* (1919), L. R. 47 Ind. App. 88, P. C.

438. — — — — —.]—Where a person not *sui juris* is a party to an appeal to His Majesty in Council & a compromise having been made, it is desired to obtain leave to withdraw the appeal, the regular & usual course is to obtain a certificate from the High Ct., from which the appeal is preferred, that the agreement is for the benefit of that party. It is only in rare cases that the Judicial Committee will itself make the necessary inquiries & grant leave without a certificate.—*GOHINDA CHANDRA PAL v. KAILASH CHANDRA PAL* (1921), L. R. 18, Ind. App. 211, P. C.

SUB-SECT. 1.—CROSS-APPEALS.

439. When leave to enter granted — Although no application in lower court—Within time limit.]—

(1) A cross-appeal was allowed from part of a decree of the Sudder Ct. appealed from to England, although resps. had not applied in India for leave to appeal within the proper time, resps. being mistaken in the practice of the Judicial Committee upon a cross-appeal.

(2) Such cross-appeal was directed to be prosecuted & heard upon one printed case, if the principal appeal was proceeded with, but in the event of the principal appeal being dismissed for want of prosecution, liberty was reserved to the resps. to prosecute the cross-appeal as a separate appeal.—*NANA NARAIN RAO v. HURREE PUNT BHAO* (1856), 11 Moo. P. C. C. 36; 6 Moo. Ind. App. 464; 14 E. R. 608, P. C.

Annotation:—*Mentd.* Baboo Boer Portab Sahee v. Maharajah Rajender Portab Sahee (1867), 12 Moo. Ind. App. 1.

440. — — — — —.]—A cross-appeal from a decree of the Sudder Dewanny Ct. in India, although not interposed within the proper time was admitted upon conditions: (a) that the principal appeal was prosecuted; & (b) that the principal & cross-appeals were consolidated & heard on one printed case.—*OMANATH CHOWDURY v. NUJEEB CHOWDURY (SHEIKH)* (1861), 8 Moo. Ind. App. 198; 19 E. R. 619, P. C.

441. — At hearing of principal appeal.]—If both parties are dissatisfied with a decree of the ct. below, a cross-appeal is necessary.

Where an appeal was brought from part of a decree:—*Held*: although the whole decree was not open to resps., who had not appealed, leave to present a cross-appeal ought to be permitted, & as applts. had waived the formality of lodging a cross-appeal, the appeal from the whole decree would be heard.—*MYNA BOYEE v. OOTARAM* (1861), 8 Moo. Ind. App. 400; 19 E. R. 582, P. C.

Annotation:—*Mentd.* Masulipatam Collector v. Cavalry Vencata Narraiah (1861), 8 Moo. Ind. App. 529.

442. — — — — —.]—Where resps. were clearly entitled to certain relief, but had not presented a cross-petition:—*Held*: the application might be made at the hearing of the appeal.—*TORONTO RY. CO. v. KING*, [1908] A. C. 260; 77 L. J. P. C. 77; 98 L. T. 650, P. C.

— On what conditions.]—*See* No. 440, *ante*.

435 i. Delay in transmitting documents—Peremptory order to lower court to transmit forthwith.]—*ALLIANCE CONTRACTING CO. v. RUSSELL* (1898), 23 V. L. R. 545.—*AUS.*

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PART X. SECT. 3, SUB-SECT. 4.

g. How dealt with—Alteration of decree in respondent's favour at hearing

of appeal—Without entry of cross-appeal by them.]—*CASSIM AHMED JEW A. NARAINAN CHETTY* (1910), L. L. R. 37 Calc. 623.—*IND.*

Sect. 3.—Practice and procedure: Sub-sects. 4, 5, 6

443. How heard—Consolidation with principal appeal—If principal appeal prosecuted.]—NANA NARAIN RAO *v.* HURREE PUNT BHAO, No. 439, *ante*.

444. ———.]—OMANATH CHOWDRY *v.* NUJEEB CHOWDRY (SHEIKH), No. 440, *ante*.

445. ———.]—MYNA BOYEE *v.* OOTARAM, No. 441, *ante*.

SUB-SECT. 5.—CONSOLIDATION OF APPEALS.

446. When allowed—General rule.]—Their Lordships will consolidate appeals at any stage if it appears convenient that they should be heard together. An appeal was struck out of the board & ordered to be consolidated with two other appeals arising out of the same will, but in a suit which had not been instituted till a year after the first appeal had been admitted.—HIDDINGH *v.* DENYSEN (1886), 12 App. Cas. 107; 57 L. T. 885, P. C.

447. ——— Suits involving same question—To bring amount within appealable value.]—*Ex p.* GOPAL LALL THAKOOR, No. 422, *ante*.

——— **Principal appeal heard with cross-appeal.]—***See* Sub-sect. 4, *ante*.

SUB-SECT. 6.—PARTIES ON APPEAL.

448. Right of third party to intervene.]—ISHUREE PERSAD NARAIN SING (MAHA-RAJAH) *v.* LAL CHUTTERPUT SING (1842), 3 Moo. Ind. App. 100; 18 E. R. 435, P. C.

449. ——— Shippers of & claimant to cargo—Appeal against condemnation of ship—For breach of Slave Trade Act, 1824 (c. 113).]—(1) The regs. contained in the Ord. in Council of June 25, 1851, issued pursuant to 2 Will. 4, c. 51, provided that if the owners & others liable to penalties under Slave Trade Act, 1824 (c. 113), are known, they should be cited by name in the monition, & be personally served. A special libel of appeal & an allegation by applts. & responsive allegation by the Crown, pleading new matters, admitted by the Ct. of Appeal, & fresh evidence taken thereon.

(2) The shippers of the cargo & a party claiming the cargo not cited in the monition, admitted by the appellate ct. to intervene in the appeal promoted by the owners of a vessel against sentence of condemnation.—HOCQUARD *v.* R., THE NEWPORT (1858), 11 Moo. P. C. C. 155; Sw. 317; 14 E. R. 654, P. C.

450. ——— Shareholder.]—LA BANQUE D'HOCHELAGA *v.* MURRAY (1890), 15 App. Cas. 414, P. C.

451. Necessity for order of revivor—Death—Of some appellants.]—Some of plffs. had died in the course of the appeal & the suit had not been revived against their representatives. In such circumstances the appeal was allowed to be prosecuted in the name of surviving plffs., as this ct. is not disposed to give effect to technical rules in pleading, which would prevent justice

PART X. SECT. 3, SUB-SECT. 6.

448 i. Right of third party to intervene.]—*Re* CHEYNE, *Ex p.* EAST LODDON (SHIRE OF) (1902), 28 V. L. R. 503.—AUS.

455 i. Substitution of—Withdrawal of appellant after transmission of appeal.]—Applt., after the transmission of his appeal to England, obtained leave in

the High Ct. to withdraw it. The appeal involved the rights of a minor, party to the suit, whose mother and guardian obtained an order for her to be substituted for the withdrawing applt., on the terms that she should give security for costs already ordered and should undertake to abide by any order as to general costs.—GOUR MOHUN CHAKRABATI *v.* TARASUNDERI

being done.—BUTE (MARCHIONESS) *v.* MASON (1849), 7 Moo. P. C. C. 1; 13 E. R. 779, P. C.

452. ——— Of respondent.]—AHIER *v.* WESTAWAY, No. 578, *post*.

453. ———.]—An appeal abated by the death of resp. & administration with the will annexed having been granted to the Administrator-General of Bengal:—*Held*: the appeal could be revived against the Administrator-General, as the personal representative of resp.—GOBIND CHUNDER SEIN *v.* RYAN (1861), 15 Moo. P. C. C. 230; 9 Moo. Ind. App. 140; 15 E. R. 482; *sub nom.* GOBIND CHUNDER SEIN *v.* ADMINISTRATOR—8 Jur. N. S. 343; 10 W. R.

454. ——— Bankruptcy—Of appellant.]—Applt. in Bengal became insolvent, of which fact notice was only received in England after the exchange of cases, & immediately before the day appointed for hearing the appeal. No communication whatever from the assignee in insolvency had been received. Both sides were willing to waive all objections, to accept all risks, & to proceed at once with the case:—*Held*: resp. should within three months, serve the assignee in insolvency with notice to revive the appeal in time for the Feb. sittings, or it should stand dismissed with costs.—GOOROOCHURN SEIN *v.* RADANAUTH SEIN (1857), 11 Moo. P. C. C. 76; 7 Moo. Ind. App. 1; 14 E. R. 624; *sub nom.* SEIN *v.* SEIN, 5 W. R. 679, P. C.

455. Substitution of—Time & mode of objection to.]—KASI PERSAD NARAIN (BABOO) *v.* KAWAL-BASI KOOR (MUSSUMAT), No. 435, *ante*.

456. Addition of—Some parties to action only made respondents—Application by another party to action to be added.]—Special leave to appeal was granted *ex p.* Applt. made only two of the parties to the suit resps. On application by another party to the suit, whose interest was affected by the appeal, the original petition for leave to appeal was ordered to be amended, & the party applying was also made a resp.—UMJAD ALLY KHAN (NAWAB) *v.* MUSSUMAT MOHUMDEE (BEGUM) (1867), 11 Moo. Ind. App. 517; 20 E. R. 195, P. C.

In prize appeals—Right of alien enemy to appeal.]—*See* PRIZE LAW & JURISDICTION.

SUB-SECT. 7.—TIME FOR APPEAL.

A. In General.

457. Effect of delay in prosecuting appeal—Dismissal for want of prosecution.]—WILSON *v.* ARNOLD (1832), 1 Moo. P. C. C. 147, n.; 12 E. R. 770, P. C.

458. ———.]—STARKEY *v.* LAPSLIE (1834), 2 Moo. P. C. C. 96, n.; 12 E. R. 910, P. C.

459. ——— Respondents dilatory also.]—Application to dismiss an appeal on the ground of delay in prosecution & no certificate being filed, pursuant to Canada Judicature Act, 1794 (c. 6), s. 31, refused, the rule allowing a year & a day for prosecuting an appeal, though usually adhered to, not being imperative upon the King in Council,

DEBI (1889), 1 L. R. 17 Calc. 693.—IND.

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b. Petition must be presented within specified time.]—NAZUH ALI KHAN *v.* OJODHYARAM KHAN (1864), 1 W. R. 13.—IND.

& resps. having no claim to complain of delay after lying by themselves eight months without making any application.—*ST. LOUIS v. ST. LOUIS* (1836), 1 Moo. P. C. C. 143; 12 E. R. 768, P. C.

460. ———.]—*RETEMEYER v. OBERMULLER* No. 389, *ante*.

461. ———.]—An appeal was allowed in Oct. 1854, by the Supreme Ct. at Calcutta to England. After the allowance of the appeal no further steps were taken by applt. In Mar. 1856, the Judicial Committee, upon a certificate of the registrar of the supreme ct. that no further proceedings had been taken after the order allowing the appeal, dismissed the appeal, at the instance of resps. for want of prosecution.—*SREEMUTTY RABUTTY DOSSEE v. RADANAUTH SEIN* (1856), 6 Moo. Ind. App. 346; 19 E. R. 130, P. C.

462. ———.]—Applt. had obtained leave from the ct. below to appeal to the Privy Council, but took no steps to procure a transcript of the record to be sent & lodged at the Privy Council office for three years, or any other steps:—*Held*: the appeal must be dismissed, with costs.—*SMITH v. CRESSWELL* (1861), 10 L. T. 672, P. C.

463. ———.]—**Effect on security given in lower court.**—Appeal dismissed for want of prosecution, under Ord. in Council of June 13, 1853, r. 5, restored, under circumstances showing that the interest of infants was materially affected, but upon condition, that the appeal should be prosecuted within a given time.

The security entered into in the Sudder Ct. for the costs of appeal to England is vacated by the dismissal consequent upon non-prosecution of the appeal within the prescribed time.

When an appeal is restored fresh security will be required to be deposited in England.—*BIRJOBUTTEE (RANEE) v. PENTAUB SING* (1860), 13 Moo. P. C. C. 465; 8 Moo. Ind. App. 160; 15 E. R. 174, P. C.

Restoration of appeal after.—*See* Sub-sect. 7, C., *post*.

Effect of delay in applying for stay of execution of decree.—*See* No. 487, *post*.

464. **From interlocutory order.—On appeal from final judgment.**—(1) In proceedings between the govt. & any party for resumption, a stranger whose rights are liable to be affected by the decision may intervene & become a party.

(2) On an appeal to the Privy Council, the propriety of any interlocutory proceedings in the course of the suit may be called in question, notwithstanding that they were submitted to at the time.

(3) Regs. applicable to the granting of a review by the Sudder Ct. of its decrees, are applicable to the proceedings of special comrs.

(4) Parties preferring petitions for review after the time allowed by the regs. must account satisfactorily for the delay, & the decision of the ct. on this point will be reviewed by the Privy Council.—*MOHESHSUR SING (MAHARAJAH) v. BENGAL GOVERNMENT* (1859), 7 Moo. Ind. App. 283; 7 W. R. 322; 19 E. R. 316, P. C.

Annotations:—As to (2) *Reid*, Sheonath v. Ramnath (1865), 10 Moo. Ind. App. 413; *Forbes v. Amceroonissa Begum* (1866), 10 Moo. Ind. App. 340; *Shah Mukhun Lall v. Baboo Sree Kishen Singh* (1868), 12 Moo. Ind. App. 157.

465. ———.]—In an appeal from the Sudder Ct., applt., by leave of that ct., appealed separately to the Queen in Council. On reversal of the Sudder Ct.'s decree, it appearing that the two applt. had a common interest, only one set of costs of appeal were allowed in moieties to the separate applt., as upon one appeal:—*Held*:

it was not too late, on an appeal from a final decree, to raise a question as to interest decided in an interlocutory decree not appealed from.—*MUKHUN LALL (SHAH) v. SREE KISHEN SINGH (BABOO)* (1868), 12 Moo. Ind. App. 157; 20 E. R. 299, P. C.

In admiralty cases.—*See* ADMIRALTY, Vol. I, pp. 235, 236, Nos. 1613, 1629.

Time for petition for leave to appeal.—*See* Sect. 3, sub-sect. 1, A. (c), *ante*.

B. Extension of.

466. **Power to grant.—Under Slave Trade Act, 1824 (c. 113).**—The provisions of above Act are conclusive, & the Judicial Committee have no power to extend the time there limited for appealing.—*MUTER v. CHIPCHASE* (1836), 1 Moo. P. C. C. 1; 12 E. R. 710, P. C.

467. **Time for making application.—Not before petition of appeal lodged.**—*GUNGADIHUR SEAL v. SREEMUTTY RADDAMONEY DOSSEE*, No. 321, *ante*.

468. **When application granted.—In favour of respondent.**—Where resp. did not appear, the appeal was after two years set down for hearing *ex p.* Before the hearing, resp. appeared, & moved under special circumstances to postpone the hearing for six months to enable him to lodge his case. The Judicial Committee put him upon terms of having the appeal heard at the next sittings, restraining him from doing anything in the interval to the prejudice of the fund in the ct. below, & with payment of the costs of the application.—*WATSON v. SREEMUNT LAL KHAN* (1851), 5 Moo. Ind. App. 417; 18 E. R. 984, P. C.

469. ———.]—**Appellant waiting for result of inquiry.**—*GUNGADIHUR SEAL v. SREEMUTTY RADDAMONEY DOSSEE*, No. 321, *ante*.

470. ———.]—**No steps taken by trustee in bankruptcy of appellant.—After postponement of hearing to enable trustee in bankruptcy to revive appeal.**—*GOOROOCHURN SEIN v. RADANAUTH SEIN*, No. 451, *ante*.

471. ———.]—**Neglect to bring all facts before lower court.**—*GRIEVE v. TASKER*, No. 376, *ante*.

C. Restoration of Appeal.

472. **Grounds for.—Application by infant on coming of age.—Appeal dismissed for want of prosecution by guardian.**—*ORPHAN BOARD v. VAN REENEN*, No. 357, *ante*.

473. ———.]—**Consolidation by lower court with pending appeal.**—Leave was given to restore an appeal dismissed for want of prosecution, the ct. below having consolidated it with another appeal in the same cause, which was still pending.—*SURROOPCHUNDER CHOWDRY (SHIAR) v. RAMRUTON MULLICK* (1837), 1 Moo. P. C. C. 404; 1 Moo. Ind. App. 358; 12 E. R. 868, P. C.

Annotation:—*Reid*, Nathooobhoy Ramdass v. Mooljee Madowdass (1840), 3 Moo. P. C. C. 87.

474. ———.]—**Instructions to oppose dismissal of appeal received too late.**—Leave was given to restore an appeal dismissed for want of prosecution, applt.' agent, though instructed to prevent the dismissal of the appeal, not having received the transcript until after the expiration of a year & a day from the time of the allowance of the appeal, & resp. having in consequence thereof obtained an order of dismissal.—*SREE MUTTY BISSNOOONDERY DABEE v. BURRODACAUNT ROY (RAJAH)* (1839), 3 Moo. P. C. C. 11; 2 Moo. Ind. App. 128; 13 E. R. 5, P. C.

475. ———.]—**Ignorance.—Of necessary steps to be taken.—& bankruptcy of agent when instructed.**—Where an appeal had been dismissed for want of

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prosecution, no step having been taken in it for ten years, the appeal was, on petition to the King in Council, restored, applt. paying the costs of dismissal & restoration, it appearing that applt. was ignorant of the proceedings necessary to be taken in England, & that he had, though after the lapse of some years, instructed a commercial house in Calcutta to prosecute the appeal, but whose agent in England becoming insolvent, no proceedings were taken to bring the case to a hearing.—**DEEDAR HOSSEIN (RAJAH) v. ZUHOOR-ON NISSA (RANEE)** (1841), 2 Moo. Ind. App. 441; 18 E. R. 368, P. C.

476. — — — Of new rules.]—An appeal was restored after being dismissed for want of effectual prosecution within the time limited by Ord. in Council of June 13, 1853, r. 5, the new rules having been only recently adopted by the Sudder Ct. at Calcutta, & applt. in ignorance of their existence, being engaged in taking steps to prosecute the appeal within the time & according to the practice previously existing.—**GUDAHUR PURSHAD TEWARREE v. SOONDERKOOOMAREE (MOONMAT)** (1854), 9 Moo. P. C. C. 86; 6 Moo. Ind. App. 201; 14 E. R. 230, P. C.

Annotation—Consd. Anundimoyce Dossee v. Poonnoo Chunder Roy (1861), 9 Moo. Ind. App. 26.

477. — — —]—Appeal from the Sudder Ct. in India, which stood dismissed under Ord. in Council of June 13, 1853, r. 5, for want of effectual prosecution, restored, as applt. was in ignorance of the existence of the new rules, the Sudder Ct. having served applt., after the interposition of the appeal, with notice that two years was allowed after the arrival of the transcript in England for prosecuting the appeal.

Where government securities for the due prosecution of the appeal & costs were deposited in the registry of the Sudder Ct. the Judicial Committee in restoring the appeal dispensed with the usual recognisance in England.—**SETO LUCHMEECHUND v. SETO ZORAWUR MULL** (1855), 9 Moo. P. C. C. 351; 6 Moo. Ind. App. 204; 14 E. R. 330, P. C.

Annotation—Consd. Anundimoyce Dossee v. Poonnoo Chunder Roy (1861), 9 Moo. Ind. App. 26.

478. — — — Interest of infants materially affected.]—**BIRJOBUTTEE (RANEE) v. PERTAUB SING**, No. 463, *ante*.

479. — — — Pecuniary difficulties of appellant.]—**DUTHIE v. BUTLER** (1860), 14 W. R. 617, P. C.

480. Necessity for fresh security on.]—**SETO LUCHMEECHUND v. SETO ZORAWUR MULL**, No. 477, *ante*.

481. — — —]—**BIRJOBUTTEE (RANEE) v. PERTAUB SING**, No. 463, *ante*.

— — — Appeal heard ex parte—Default of party applying for rehearing.]—*See* Nos. 692–695, *post*.

SUB-SECT. 8.—LODGING CASES.

482. Necessity for—Before application to dismiss appeal—For want of prosecution.]—*Semble*: It is not necessary for resp. to lodge a printed case & appendix before moving to dismiss the appeal for non-prosecution.—**JACKSON v. PROTHERO** (1842), 3 Moo. P. C. C. 490; 13 E. R. 199, P. C.

483. — — — Appeal against refusal of lower court to allow interest—On judgment reversed by

Judicial Committee—Order in Council silent as to interest.]—By an order in Council on an appeal, the judgment of the Supreme Ct. at Hong Kong in an action of trover was reversed, & a nonsuit directed to be entered. On the receipt of this order in the colony, applt., to carry the order into execution, applied to the Supreme Ct. for an order for repayment of the amount of the judgment, with interest upon the whole sum paid by way of principal & interest by applt. The Supreme Ct. was of opinion, that as there were no express directions in the order in Council for payment of interest on the judgment, it had no power to allow interest, & refused to make any order thereon.—*Held*: (1) although by the terms of the order in Council the judgment of the Supreme Ct. was only reversed, & a nonsuit directed to be entered, yet, interest upon the judgment was to be implied under the general words there used, & inasmuch as under the general regs. of 1845, applicable to appeals from Hong Kong to the Queen in Council, the Supreme Ct. was to execute & carry into effect the judgments & orders of the Queen in Council, that ct. had power, without more, to have ordered payment of interest; as otherwise the successful applt. would not be restored to all he had lost by reason of the judgment being reversed.

Leave to appeal had been granted by the ct. below from the order refusing interest, but applt. petitioned the Queen in Council praying that the Judicial Committee might determine the matter as related to the claim for interest.—*Held*: (2) if the original order did not impliedly give interest, & as an appeal had been granted from the order refusing it, the more convenient course would be to bring the question before the Judicial Committee on the original appeal.

This was agreed, & the case directed to be argued, without printed cases, on the materials furnished by the record of the proceedings on the application to the ct. below to carry out the order in Council.—**RODGER v. COMPTON D'ESCOMPTES DE PARIS** (1871), 1 L. R. 3 P. C. 465; 7 Moo. P. C. C. N. S. 314; 40 L. J. P. C. 1; 24 L. T. 111; 19 W. R. 449; 17 E. R. 120, P. C.

Annotations.—As to (1) *Consd. Spallati v. Constantimidi* (1872), 20 W. R. 823. *Refd. Merchant Banking Co. of London v. Maud* (1874), 43 L. J. Ch 861; *Cox v. Hakes* (1890), 15 App. Cas. 506; *Nitrate Producers S.S. Co. v. Short* (1922), 91 L. J. K. B. 871.

— — — Cross-appeal.]—*See* Sub-sect. 4, *ante*.

484. Effect of failure to lodge—By respondent—Stay of hearing until case lodged.]—Under the provisions of Judicial Committee Act, 1833 (c. 41) the Ord. in Council of Sept. 4, 1833, an appeal from the Sudder Ct. in India was brought to a hearing by the East India Co. before the Judicial Committee of the Privy Council, & by an order in Council made on the appeal in 1836, the costs incurred in prosecuting the appeal were directed to be paid to the East India Co. by the respective parties to the appeal, or their representatives, as provided by the Ord. in Council of November 18, 1833. On a suit brought by the Government in 1852, against the representatives of one of the parties to the appeal, to recover part of the costs incurred by the East India Co. in bringing the appeal to a hearing.—*Held*: A printed case must be lodged before the Judicial Committee would hear the case.—**BENGAL GOVERNMENT v. SHURRUFUTOONNISSA (MUS-SUMAT)** (1860), 8 Moo. Ind. App. 225; 8 W. R. 762; 19 E. R. 516, P. C.

485. — By appellant—Appeal dismissed.]—Upon special application, permission to appeal was granted in Dec. 1860, upon condition of applt. depositing with the registrar of the Judicial Committee of the Privy Council the sum of £300, for costs. The record was transmitted from India and resp. brought in his printed case, but applt. though served with a peremptory notice, did not lodge his case or take any other step in the matter. On application by resp. the appeal was dismissed, & resp.'s costs directed to be paid out of the sum deposited in the council office, the balance to be returned to applt.—*GOUR MONEE DEBIA v. KHAJAH ABDOL GUNNEE* (1864), 10 Moo. Ind. App. 59; 19 E. R. 894, P. C.

SUB-SECT. 9.—OTHER INTERLOCUTORY PROCEEDINGS.

A. Stay of Proceedings pending Appeal.

486. Jurisdiction to order.]—As the Privy Council is the ct. of appeal from the colonial ct. & has jurisdiction to stay the execution of the decree pending the appeal, the ct. will not interfere by injunction, on the ground of error or irregularity in the decree of the colonial ct.

Qu. whether, in a case of error shown in the judgment of the ct. of a foreign country from which there was no appeal to any of Her Majesty's cts. the decision would be the same.—*HENDERSON v. HENDERSON* (1843), 3 Hare, 100; 1 L. T. O. S. 410; 67 E. R. 313.

Annotations:—Expld. *Mutrie v. Binney* (1887), 35 Ch. D. 614. *Reid. Re Henderson, Nouvion v. Freeman* (1887), 35 Ch. D. 701; *Pemberton v. Hughes*, [1899] 1 Ch. 781. *Mentd.* *Simpson v. Fogo* (1863), 1 Hem. & M. 195; *Srimut Rajah Mootoo Vijaya Raganadha Bodha Gooroo Sawmy Periya Odaya Taver v. Katama Natchiar* (1866), 11 Moo. Ind. App. 50; *Worman v. Worman* (1889), 43 Ch. D. 296; *Bake v. French*, [1907] 1 Ch. 428.

487. When ordered—Not after delay—Nor where probability of order having been acted on.]—Motion to rescind order of the Sudder Ct. at Madras, for the execution of a decree pending an appeal, & to stay execution, was refused, on the ground of the length of time that had elapsed from the making of the order & the probability of its having been acted on in India.—*Re BOMMARANJEE BAHADOOR (RAJAH)* (1852), 5 Moo. Ind. App. 298; 18 E. R. 909, P. C.

488. —.]—SIEMENS v. BUFE (HEIRS OF), No. 381, *ante*.

489. — Not in absence of other party—Respondent not served with notice.]—By a decree of the Sudder Ct. at Calcutta a suit was remanded to the Zillah Ct. to be tried *de novo*. An appeal to England from this decree was refused, but upon special application was admitted by the Judicial Committee of the Privy Council, whereupon applt. applied to the High Court at Calcutta to stay proceedings pending the appeal to England, on the ground, that the decision of the appellate ct. would govern the question at issue, which application that ct. refused. Applt. then presented a petition to Her Majesty in Council, &

applied *ex p.* for the same relief, but the Judicial Committee, in the resp.'s absence, refused to make any order, though without prejudice to petitioner's further application when he had served the resp.—*PERIADH SEIN (RAJAH) v. BHOODOO SINGH (BABOO)* (1864), 10 Moo. Ind. App. 78; 19 E. R. 902, P. C.

Necessity for notice before hearing *ex parte*, see Nos. 500, 501, *post*.

490. — Serious injury to applicant.]—Application to stay proceedings in a cause in which an appeal from an order in the nature of an interlocutory order is pending before Her Majesty in Council, ought satisfactorily to show that a serious injury will be the result to the party applying, unless the delay asked for be granted, & that the party applying has come promptly to make the application. Where, therefore, applt. from an order of the high ct. of judicature, which remitted a cause, appealed to that ct. from the Zillah Ct. back for the trial of issues framed in accordance with the provisions of Act, No. 8, of 1859, s. 139, having failed in obtaining an order from the high ct. to stay proceedings in the Zillah Ct. pending the appeal, but not having appealed from that decision, presented a petition to Her Majesty in Council praying that all proceedings in the remanded suit might be stayed till the pending appeal had been heard, the Judicial Committee, without determining the question of their right to interfere in such circumstances:—*Held*: petitioner had not shown any such injury, or used such expedition as entitled him to ask for a stay of proceedings.

Qu. whether, where an order has been made by the superior ct. below refusing to stay proceedings, & such order is not specially appealed from, the Judicial Committee have any authority to interfere, though an appeal is pending before them from a previous order of the superior ct. made in the same suit, remitting the cause back to the inferior ct. before which it is pending.—*SIDREE NUZUR ALLY KHAN (NAWAB) v. OJOODHYARAM KHAN (RAJAH)* (1865), L. R. 1 P. C. 8; 10 Moo. Ind. App. 322; 34 L. J. P. C. 21; 14 W. R. 250; 19 E. R. 995; *sub nom.* *ALLY KHAN v. AJOADHYARAM KHAN*, 12 Jur. N. S. 59, P. C.

491. —.]—Petition of special leave granted from an interlocutory order not appealable under the code. Stay of execution refused, but an opinion intimated that pending the appeal the decree holder should not be put in possession of the large sums in dispute.—*INDER KUMARI (MAHARANI) v. JATPAL KUMARI (MAHARANI)* (1886), L. R. 14 Ind. App. 1, P. C.

B. Miscellaneous Applications.

492. For ex parte hearing—No appearance by respondent.]—To an action for recovery of arrears of rent, due to pltf. under a sub-lease of a parganna, deft. pleaded that the sub-lease was part of a loan transaction, for the purpose of securing to pltf. an illegal interest upon the loan, & was void, under reg. 15 of 1793. The cts. in India

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486 i. Jurisdiction to order—Whether court below has jurisdiction.]—*HOWARTH v. WALKER* (1903), 3 S. R. N. S. W. 235; 20 N. S. W. W. N. 91.—**AUS.**

486 ii. —.]—The Supreme Ct. has no power to stay execution on a judgment of the High Ct. pending an appeal therefrom to the Privy Council.—*MACINTOSH v. DUN* (1906), 3 S. R. N. S. W. 461; 23 N. S. W. W. N. 152.—**AUS.**

487 i. When ordered.]—An appeal to the Privy Council by special leave is not within Privy Council Appeals Act, 1914, s. 10, but where the Judicial Committee has given leave to appeal the Supreme Ct. of Ontario will, upon security being given, stay execution upon the judgment from which the appeal is taken.—*MITCHELL v. FIDELITY & CASUALTY CO. OF NEW YORK* (1917), 38 O. L. R. 543; 34 D. L. R. 22.—**CAN.**

487 ii. —.]—Where in the same

case one party appeals to the Supreme Ct. of Canada & the other appeals to the Privy Council, proceedings in the former case will be stayed pending the decision in the latter.—*BANK OF MONTREAL v. DEMERS* (1899), 29 S. C. R. 435.—**CAN.**

487 iii. —.]—A judge in chambers of the Supreme Ct. of Canada will stay proceedings pending an appeal to the Privy Council.—*UNION INVESTMENT CO. v. WELLS* (1908), 41 S. C. R. 244.—**CAN.**

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decided it was an usurious transaction, & dismissed the action. Upon appeal, this decision was confirmed by the Judicial Committee of the Privy Council.

No appearance having been entered by resps. to an appeal from India, and applt.'s case being ready to lodge for hearing, upon the application of applt.:—*Held*: an order would be made that resps. should be served with notice, & unless they brought in their case without delay, the appeal would be heard *ex p.* giving the applt. liberty to proceed in the ct. below, to render such service effectual; & the ct. was ordered to certify to the Judicial Committee, what had been done with respect to the same.—*WISE v. KISHENKOOMAR BOUS* (1847), 4 Moo. Ind. App. 201; 18 E. R. 675, P. C.

Annotation: *Mentd.* *Wise v. Juggobundhoo Bose* (1869), 12 Moo. Ind. App. 477.

493. For security—For protection of property pending appeal—Decree-holder in possession.]—This was an application by applt. for an order that resp., who was in possession as a decree-holder, under an execution order of the Sudder Ct., to give security for the protection of the property in suit pending the appeal to England. Within six months after decree & prior to the admission of the appeal therefrom to England, the Sudder Dewanny Ct. upon an *ex p.* application, without notice, issued an execution order, putting the decree-holder in possession. This was done without calling for security as provided by sect. 4, Ben. reg. 16 of 1797. Applt. on the admission of the appeal, applied to the Sudder Ct. for security from the party in possession pending the appeal, but that ct. held that as the decree-holder was in possession under an execution ord. which could not be appealed from, they had no power to interfere. On petition to the Judicial Committee:—*Held*: in the circumstances, & upon affidavit of waste an order should be made, declaring that it was competent to the Sudder ct. to require security to be given for protection of the property pending the appeal, notwithstanding execution of the decree had issued, & they would give permission to applt. to apply to the Sudder Ct. with an intimation of that opinion.—*JARIUT-OOL-BUTOOL (MUSSUMAT) v. MUSSUMAT HOSEINEE (BEGUM)* (1865), 10 Moo. Ind. App. 196; 19 E. R. 946, P. C.

SUB-SECT. 10.—HEARING OF APPEAL.

A. In General.

494. Who may practise.]—The words of sects. 2 & 3 of the Rules of Mar. 31, 1871, are such that the classes of persons to be admitted to practise in the Privy Council must be either solrs. or others practising in London, or solrs. admitted by the High Ct. in India or in the Colonies, respectively, & have not left an undefined class admissible at the discretion of the Judicial Committee.—*Re TWIDALE'S PETITION* (1888), 14 App. Cas. 328; L. R. 16 Ind. App. 163, P. C.

495. Who may be heard—Separate counsel—Parties with same interest.]—If there are several parties in one appeal who say they are in different interests, then if it is quite clear to the ct. that they really are in different interests, the practice is to hear them by separate counsel. But if they are in the same interest, then the ct. makes them

arrange together so as to be heard by one counsel. But where there are two appeals each applt. has a right to be represented by two counsel & their Lordships could not limit them to one though the facts & arguments used might be the same in both cases (LORD BROUGHAM).—*Re DOWNIE & ARBINDELL* (1841), 3 Moo. P. C. C. 414; 13 E. R. 168, P. C.

Annotations:—*Mentd.* *Re Wallace* (1866), L. R. 1 P. C. 283; *McDermott v. British Guiana Judges* (1868), L. R. 2 C. P. 341.

496. ——— Parties with different interests.]—*Re DOWNIE & ARBINDELL*, No. 495, *ante*.

497. ——— Two counsel for each party.]—There being two sets of applts. having separate interests & adverse claims against each other as well as against resps. the Judicial Committee permitted two counsel to be heard for each set of applts.—*JEWA-JEE v. THIMBUK-JEE* (1842), 3 Moo. Ind. App. 138; 18 E. R. 449, P. C.

498. ——— Two sets of defts. severed in defence, their interests involving an alternative as to which was responsible to pltf., & the ct. below fixed one set of defts. with the liability. Upon an appeal in which pltf. was made sole resp.:—*Held*: the other defts. were entitled to appear & to lodge a separate case. Separate counsel appeared for them.—*EAST INDIA CO. v. ROBERTSON* (1859), 12 Moo. P. C. C. 400; 7 Moo. Ind. App. 361; 11 E. R. 963, P. C.

Annotations:—*Mentd.* *Boldero v. East India Co.* (1865), 11 H. L. Cas. 405; *Secretary of State for India v. Underwood* (1870), L. R. 4 H. L. 580; *Knill v. Dunmogue*, [1911] 2 Ch. 199.

499. Reply — When allowed.]—(1) Testator left two substantive wills, each disposing of his entire property. By the first, dated in 1838, he appointed exors., to one of whom he gave the residue of his estate. By the second will, dated in 1839, which contained no revocation of the prior one, he gave the whole of his property to his wife, with the exception of £5, but appointed no exors.:—*Held*: affirming the decree of the ct. below, the second will operated as a revocation of the first will, & was alone entitled to probate.

(2) A reply on the hearing of the appeal was allowed, though not allowed by the practice of the ct. below on the original hearing of the act on petition.—*HENFREY v. HENFREY* (1842), 4 Moo. P. C. C. 29; 13 E. R. 211, P. C.

Annotations:—*As to* (1) *Refd.* *Cutto v. Gilbert* (1851), 9 Moo. P. C. C. 131; *Richards v. Queen's Proctor* (1854), 1 Ecc. & Ad. 235; *Lemage v. Goodban* (1865), L. Jt. 1 P. & D. 57; *Dempsey v. Lawson* (1877), 2 P. D. 98. *Generally, Mentd.* *Townsend v. Moore*, [1905] P. 66; *Nixon v. Prince* (1918), 34 T. L. R. 444.

500. Ex parte hearing—When allowed—Necessity for personal service on respondent—Of notice of appeal.]—Their Lordships declined to hear an appeal from the Sudder Dewanny at Madras *ex p.* without evidence of resp. having been personally served with notice that the appeal was pending, & ordered the appeal to stand over, with leave for applt. to proceed in the ct. below, to render service of such notice effectual.—*KONADRY VALABHA v. VALIA TAMBURATI* (1844), 4 Moo. Ind. App. 213, n.; 18 E. R. 680, P. C.

501. ——— Default of respondent in lodging case.]—No appearance having been entered by resps., to an appeal from India, & applt.'s case being ready to lodge for hearing, their Lordships, upon the application of applt., made an order, that resps. should be served with notice, that unless they brought in their case without delay, the appeal would be heard *ex p.*, giving applt. liberty to proceed in the ct. below, to render such service effectual, & the ct. was ordered to certify to the Judicial Committee what had been done

with respect to the same.—*WISE v. KISHEN-ROOMAR BOUS* (1847), 4 Moo. Ind. App. 201; 18 E. R. 875, P. C.
Annotation:—Mentd. Wise v. Juggobundhoo Bose (1869), 12 Moo. Ind. App. 477.

B. What Evidence Admissible.

502. Evidence rejected in lower court.—But included in record—Rejection not appealed from.—Evidence tendered to the Sudder Ct. on a petition for review, which was refused & the order of refusal not appealed from, though forming part of the transcript, cannot be referred to in the argument upon the appeal from the original judgment.—*IMDAD ALI (SHEIKH) v. MUSSUMAT KOOTBY (BEGUM)* (1842), 3 Moo. Ind. App. 1; 18 E. R. 398, P. C.

503. —.]—The Supreme Ct. of Canada, having on the objection of resps. refused to admit a map in evidence on the ground that it had not been tendered at the trial, ordered a new trial:—*Held*: whether or not the Supreme Ct. was right in refusing to admit the map, their Lordships would admit it.—*BLUE & DESCHAMPS v. RED MOUNTAIN RY.*, [1909] A. C. 361; 78 L. J. P. C. 107, P. C.

504. Documents not indorsed by trial judge.—In accordance with procedure in court below.—Documents which have not been indorsed by the trial judge in accordance with the provisions of Ord. 13, r. 4, of Civil Procedure Code (V. of 1908) are not admissible for any purpose on appeal to the Privy Council.—*SADIK ILUSAIN KHAN (MIRZA) v. HASHIM ALI KHAN* (1916), L. R. 43 Ind. App. 216; 115 L. T. 353, P. C.

505. Further evidence—General rule.—*LYALL v. JARDINE*, No. 351, *ante*.

506. — Taken on commission.—In actions on exchange contracts, the evidence as to the parties' respective compliance with a certain condition precedent being in London, their Lordships directed it to be taken on commission instead of remitting the case to Shanghai.—*BANK OF CHINA, JAPAN, & THE STRAITS v. AMERICAN TRADING CO.*, [1894] A. C. 266; 63 L. J. P. C. 92; 70 L. T. 819; 6 R. 404, P. C.

507. — Medical certificate of competency.—Of party in suit impotentia causa.—A medical certificate of the competency of the party in a suit *impotentia causa*, not in evidence in the ct. below, refused to be admitted on appeal.—*HARRISON v. HARRISON* (1842), 4 Moo. P. C. C. 96; 6 Jur. 899; 13 E. R. 238, P. C.; *affy. S. C. sub nom. SPARROW v. HARRISON* (1841), 3 Curt. 16; *sub nom. HARRISON v. SPARROW* (1842), 3 Curt. 1.

Annotations:—Mentd. Handley v. Edwards (1844), 4 Moo. P. C. C. 407; *A. v. B.* (1853), 1 Ecc. & Ad. 12; *Hall v. Wright* (1858), E. R. & E. 765; *G. v. M.* (1885), 53 L. T. 398; *M. (otherwise D.) v. D.* (1885), 10 P. D. 75.

508. —.]—*HUGHES v. PORRAL*, No. 334, *ante*.

509. — Appeal under Slave Trade Act, 1824 (c. 113).—*HOCQUARD v. R., THE NEWPORT*, No. 449, *ante*.

510. — Refusal of lower court to hear witnesses—Special examiner appointed by Judicial Committee.—The Royal Ct. of Jersey having refused to hear witnesses tendered by a deft. to an action, in support of one of his pleas, & great delay having occurred from the course pursued, the Judicial Committee, under the powers of Judicial Committee Act, 1833 (c. 41), s. 7, appointed a special examiner to take further evidence in the island, confining his inquiry to certain facts, & directing him to report the same within a limited time, the appeal to stand over for the production of his report & to be argued with reference only

to the effect produced upon the entire case by such additional evidence.—*FAILLÉ v. LE SUEUR & LE HUQUET* (1859), 12 Moo. P. C. C. 501; 7 W. R. 707; 14 E. R. 1002, P. C.

— Shorthand writers' notes—To impeach judge's notes.—*See* No. 431, *ante*.

511. — Material facts concealed in petition for leave to appeal.—Where an order granting special leave to appeal had been made upon a petition which improperly concealed the ground upon which the appeal had been refused by the ct. below:—*Held*: a subsequent petition that further evidence be taken must be refused, as nothing would be done to assist an appeal so instituted.—*BAUDAINS v. JERSEY BANKING CO. (LIQUIDATORS), Ex p. BAUDAINS* (1888), 13 App. Cas. 832, P. C.

512. — Appeal from committal for contempt.—A letter which had been published in a colonial newspaper contained criticisms on the conduct of the Chief Justice of the colony of such a nature that it might have been made the subject of proceedings for libel, but was not in the circumstances calculated to obstruct or interfere with the course of justice or the due administration of the law.

It appeared that the editor had, on notice from the ct., refused to discover the name of the writer, & had thereupon been sentenced to fine & imprisonment during pleasure for the publication, & to fine or imprisonment for the refusal.

There may not be imported into a case of this kind any matter which was not in evidence against deft., nor will their Lordships permit any such matter to be laid before them.—*Re SPECIAL REFERENCE FROM BAHAMA ISLANDS*, [1893] A. C. 138; *sub nom. Re MOSELEY*, 62 L. J. P. C. 79; 68 L. T. 105; 57 J. P. 277, P. C.

Annotation:—Mentd. Seaward v. Paterson, [1897] 1 Ch. 315.

513. — Appeal from Consistory Court—Under Clergy Discipline Act, 1892 (c. 32).—In fixing a day for the hearing of an appeal from a judgment of the Consistory Ct. of Lincoln on charges brought against applt., who was a clergyman, applt.'s application that the appeal might in form be that of a hearing *de novo* of the charges, so as to enable him not only to call such witnesses as had given evidence in the Consistory Ct., but fresh evidence, was allowed.—*WAKEFORD v. LINCOLN (Bp.)*, [1921] 1 A. C. 813; 90 L. J. P. C. 171; 125 L. T. 513; 65 Sol. Jo. 532, P. C.

C. Power of Judicial Committee.

(a) *In General.*

514. To postpone hearing—Ex parte appeal—No evidence that respondent served with notice of appeal.—*KONADRY VALABHA v. VALIA TAMBURATI*, No. 500, *ante*.

515. — On bankruptcy of appellant—To enable trustee in bankruptcy to revive appeal.—*GOOROOCHURN SEIN v. RADANAUTH SEIN*, No. 451, *ante*.

516. — For transmission of original documents—Impeached as forgeries.—When false witnesses or forged documents are produced to support a case, such fact naturally creates suspicion, but if the appellate ct. has to deal with a just case, though foolishly & wickedly attempted to be supported by false evidence, such circumstance will prejudice the judgment on the merits, when the case is supported by independent evidence.

It was so ruled, when their Lordships were satisfied from the evidence that an ancient tenure

Sect. 3.—Practice and procedure: Sub-sect. 10, C. (a) & (b).]

existed, which was endeavoured to be supported by a forged document & evidence.

Such document being impeached, as being forged on the face of it, the case was directed to stand over for the original document to be transmitted from India for inspection at the hearing of the appeal.—**SURNOMOYEE (RANEE) v. SUTTEE-SCHUNDER ROY (MAHARAJAH)** (1864), 10 Moo. Ind. App. 123; 19 E. R. 918, P. C.

Annotations:—*Refd.* **Sevvaji Vijaya Itaghnudha Valoji Krishnan Gopalar v. Chinna Nayana (Hetti)** (1864), 10 Moo. Ind. App. 151. **Mentd.** **Baboo Dhunput Singh v. Gooman Singh** (1867), 11 Moo. Ind. App. 433; **Rajah Suttosurum Ghosal v. Mohoshchunder Mitter** (1868), 12 Moo. Ind. App. 263; **Khajah Assanoollah v. Obhoy chunder Roy** (1870), 13 Moo. Ind. App. 317.

517. — Record not settled in accordance with colonial procedure.]—In a suit raising issues of fact it did not appear from the record transmitted from India that the Judge of the Zillah Ct. had, in conformity with the Code of Civil Procedure Act (VIII of 1859), ss. 139–141, settled or recorded the issues in the suit, although he allowed evidence in the cause to be taken. In such circumstances the Judicial Committee postponed the hearing of the appeal until a certified copy of the proceedings in the cause should be transmitted, & in the alternative of no such issues being settled, set aside the decree of the Sudder Ct. at Agra, with directions to that ct. to remand the suit to the lower ct. to be tried

(**BABOO**) **v. JANKFE PERSHAD** (1866), *nd.* App. 25; 20 E. R. 10, P. C.

Annotation:—*Refd.* **Mussumat Mitna v. Syud Fuzl Rub** (1870), 13 Moo. Ind. App. 573.

518. To consider point not raised in petition for leave to appeal—Leave granted on ground of important question involved—Objection that decree appealed from declaratory only barred.]—Although it is not an invariable rule that no questions can be raised at the hearing which are not indicated in the petition for special leave to appeal, yet where special leave had been obtained on the ground that important questions affecting a large community were involved in the decisions sought to be appealed from:—*Held*: applt. was precluded from objecting to the decree on the ground of its being declaratory only.—**SHEO SINGH RAI v. MUSSUMUT DAKHO** (1878), L. R. 5 Ind. App. 87, P. C.

Annotation:—*Mentd.* **Rani Bhagwan Kaur v. Bose** (1903), 19 T. L. R. 690.

519. — Question of law—Objection that question of fact wrongly decided barred.]—Parties who have obtained special leave to appeal on the representation that they desire to raise a particular question of law of great & general importance, will not be permitted at the hearing of the appeal to say that no such question arises, & to argue that the case turns upon a question of fact wrongly decided in the ct. below.—**ST. JOHN'S CORPN. v. CENTRAL VERMONT RY. CO.** (1889), 14 App. Cas. 590; 59 L. J. P. C. 15; 61 L. T. 441, P. C.

To consider points not raised in lower court.]—*See* Sub-sect. 10, C. (b), *post*.

520. To retain suit—Appeal in ecclesiastical matter.]—On an appeal from an order or decree made by the Dean of the Arches there was a prayer by resp. that the cause should be retained before the Judicial Committee of the Privy Council:—*Held*: it ought to be remitted to the Arches Ct.

This is a ct. of appeal in the last resort, & their

lordships think that, except under peculiar circumstances, such a ct. ought not to decide any cause in the first instance, as it ought to have the benefit of the discussion & judgment in the ct. below, & there ought not to be an original judgment pronounced, from which there is no appeal (**LORD CAMPBELL**).—**HEAD v. SANDERS** (1842), 4 Moo. P. C. C. 186; *Brod. & F.* 30; 6 Jur. 1071; 13 E. R. 273, P. C.; *affg.* S. C. *sub nom.* **SANDERS v. HEAD**, 3 Curt. 32.

Annotations:—*Apld.* **Martin v. Mackonochie** (1882), 7 P. D. 94. *Mentd.* **Steward v. Francis** (1843), 3 Curt. 209; **Heath v. Burder** (1860), *Brod. & F.* 212; **Sheppard v. Philimore & Bennett** (1869), L. R. 2 P. C. 450; **R. v. Oxford Bp.** (1879), 4 Q. B. D. 525.

521. — Decree admitting articles.]—On appeal from a decree of an ecclesiastical ct., admitting articles of charge, the Judicial Committee, after coming to the conclusion that the articles were rightly admitted, retained the cause, & proceeded to final hearing, without any order having been made by the Crown for retaining the cause, or for disallowing the appeal from the decree admitting the articles, the committee considering that they had this power under Judicial Committee Act, 1843 (c. 38), s. 2.—**VOYSEY v. NOBLE, NOBLE v. VOYSEY** (1871), L. R. 3 P. C. 357; 7 Moo. P. C. C. N. S. 167; 40 L. J. Eccl. 11; 23 L. T. 822; 35 J. P. 250; 19 W. R. 629; 17 E. R. 65, P. C.

Annotation:—*Mentd.* **Martin v. Mackonochie** (1883), 8 P. D. 191.

522. — —.]—**MARTIN v. MACKONOCHE**, No. 329, *ante*.

matters generally, *see*

ECCELESIASTICAL LAW.

523. — No judgment given in court below—

All evidence before Judicial Committee.]—**KENT v. COMMUNAUTÉ DES SOEURS DE CHARITÉ DE LA PROVIDENCE**, No. 330, *ante*.

To remit appeal.]—*See* Sub-sect. 10, C. (c), *post*.

524. To assess damages—At gross sum—No evidence as to exact amount of loss.]—Damages were assessed at a gross sum by the Judicial Committee, no sufficient evidence being furnished in the cause, to calculate the exact amount of the loss sustained.—**BURDAKANTH ROY (RAJA) v. ALUK MUNJOOREE DASIAH** (1848), 4 Moo. Ind. App. 321; 18 E. R. 722, P. C.

525. — All evidence before Judicial Committee.]—(1) On appeal, the appellate ct. was of opinion, that there was evidence from which the ct. below ought to have awarded damages in respect of losses sustained by an illegal attachment. As the whole evidence was before the appellate ct.:—*Held*: there was no necessity to remit the case to India for re-trial, & the Judicial Committee accordingly would assess the damages from the materials before them.

(2) Pltf. claimed as damages a larger sum than the appellate ct. awarded. No costs were given on the appeal:—*Held*: as pltf. recovered a less amount than he laid in his plaint, his costs in the ct. below were to be apportioned to the amount recovered & not to the sum claimed.—**MUDHUN MOHUN DOSS v. GOKUL DOSS** (1866), 10 Moo. Ind. App. 563; 19 E. R. 1085; *sub nom.* **DOSS v. DOSS**, 14 L. T. 646; *sub nom.* **MUDUN MOHUN DOSS v. GOKUL DOSS**, 14 W. R. 590, P. C.

526. To give judgment—Without ordering new trial.]—Upon the reversal of a judgment of the Supreme Ct. at Calcutta, finding for pltf., the ct., in the circumstances of the constitution of the Supreme Ct., directed a verdict to be entered for defts., instead of awarding a *venire de novo*.—**BANK OF BENGAL v. MACLEOD, BANK OF BENGAL**

v. FAGAN (1849), 7 Moo. P. C. C. 35, 61; 5 Moo. Ind. App. 1, 27; 14 L. T. O. S. 285; 13 Jur. 945; 13 E. R. 792, 802, P. C.

Annotations.—*Mentd.* *Raphael v. Bank of England* (1855), 17 C. B. 161; *Jonnenjoy Coondoo v. Watson* (1884), 9 App. Cas. 561; *Lewis v. Ramsdale* (1886), 55 L. T. 179; *London Joint Stock Bank v. Simmons*, [1892] A. C. 201; *Hambro v. Burnand*, [1904] 2 K. B. 10; *Ruben v. Great Fingall Consolidated* (1904), 73 L. J. K. B. 872.

527. ——— **Facts & law all one way.**—In a case in which the facts & law appear to be entirely one way, their Lordships will make the presumptions which should properly be made by a jury, without sending the case down for a new trial.—*DES BARRES v. SHEY* (1873), 29 L. T. 592; 22 W. R. 273, P. C.

528. ——— **Appellant only asking for new trial.**—*Ct. of Appeal* (New Zealand) Act, 1882, Sched., r. 5, confers upon the Ct. of Appeal powers substantially identical with those conferred on the Ct. of Appeal in England by R.S.C., Ord. 58, r. 4, enabling the ct. to enter judgment according to the evident justice of the case without ordering a new trial; but where applt. in the ct. below did not appear to have asked the ct. to exercise this power, but only for a new trial, the Judicial Committee would not exercise the power on appeal, though in their opinion the verdict could be maintained, but directed a new trial.—*CLOUSTON & Co., LTD. v. CORRY*, [1906] A. C. 122; 75 L. J. P. C. 20; 93 L. T. 706; 54 W. R. 382; 22 T. L. R. 107, P. C.

Annotations.—*Refd.* *Skeate v. Slaters*, [1914] 2 K. B. 429. *Mentd.* *Thompson v. British Berna Motor Lorries* (1917), 33 T. L. R. 187.

529. To order new trial.—Although the Privy Council have the right, if they think fit, to order a new trial on any ground, that power will not be exercised merely where the verdict is not altogether satisfactory, but only where the evidence so strongly preponderates against it as to lead to the conclusion that the jury have either wilfully disregarded the evidence or failed to understand or appreciate it.—*CONNECTICUT MUTUAL LIFE INSURANCE CO. OF HERTFORD v. MOORE* (1881), 6 App. Cas. 644, P. C.

—*See, also*, No. 528, *ante*, No. 530, *post*.

530. To give leave to amend pleadings.—On order for new trial.—In reversing the judgment of the ct. below, liberty was given to amend the pleadings, & a new trial directed, & costs of the amendment of the pleadings were directed to abide the event of the new trial.—*WILLIAMS v. BYRNES* (1863), 1 Moo. P. C. C. N. S. 154; 2 New Rep. 47; 8 L. T. 69; 9 Jur. N. S. 363; 11 W. R. 487; 15 E. R. 660, P. C.

Annotations.—*Mentd.* *Potter v. Duffield* (1874), L. R. 18 Eq. 4; *Rossiter v. Miller* (1877), 46 L. J. Ch. 228; *Lovesy v. Palmer*, [1916] 2 Ch. 233.

531. To give leave to institute fresh suit.—After reversing decree.—In a suit for possession pltf.'s title depended upon the fact of a division having taken place between the family. No averment of such division was made in the plaint, nor did the cts. in India, as required by Madras Regulation XV. of 1816, Sect. 10, make it a point to be established, though some evidence was given of the fact:—*Held*: there had been a miscarriage, the conditions of the regulation being imperative, & the decree of the Sudder Dewanny Adawlut reversed, but, as the parties had acted under a misapprehension of the regulation, leave would be given to insti-

tute a fresh suit within three years.—*SRIMUT MOOTTOO VIJAYA RAGHANADHA GOWERY VALLABIA PERIA WOODIA TAVER v. RANY ANGA MOOTTOO NATCHIAR* (1814), 3 Moo. Ind. App. 278; 18 E. R. 503, P. C.

Annotations.—*Refd.* *Namboory Setupaty v. Kanoooolanoo Pulla* (1845), 3 Moo. Ind. App. 359; *Katama Natchiar v. Rajah of Shivagunga* (1863), 9 Moo. Ind. App. 543; *Srimut Rajah Moottoo Vijaya Raganadha Bodha Gooroo Sawmy Periya Odaya Taver v. Katama Natchiar* (1866), 11 Moo. Ind. App. 50.

532. To order payment of money in hands of Accountant-General of Court of Chancery.—On dismissal of appeal or compromise.—Parties to an appeal agreed to compromise the same, & that applt. should have paid over to him a certain sum of money, the amount of compensation, in respect of slaves attached to an estate, the subject of the appeal. Upon petition, to dismiss the appeal, an order of dismissal was made, containing also an order for the Accountant-General of the Ct. of Ch., to pay to applt. the money in question.—*M'TURK v. DOUGLAS* (1849), 6 Moo. P. C. C. 500; 13 E. R. 777, P. C.

533. To order lower court to carry out terms of compromise.—On a petition to dismiss an appeal from the Sudder Ct., in India, & for an order directing that ct. to carry into execution the terms of a deed of compromise, upon which the withdrawal of the appeal was founded:—*Held*: the order must be refused.

All the ct. will do, in such circumstances, is to make an order of dismissal, reserving to the parties leave to apply to the ct. in India to take further proceedings in pursuance of such agreement.—*SUTTI CHURN GHOSAL (RAJA) v. SRI MUDDEN KISHORE INDOO* (1850), 7 Moo. P. C. C. 140; 5 Moo. Ind. App. 107; 13 E. R. 833, P. C.

534. To allow interest.—Judgment reversing decree & ordering payment of money to appellant.—A deed of arrangement & release in English form, between members of a Hindoo family in respect of certain joint estate, claimed by a childless Hindoo widow of one of the co-heirs, in her character of heiress & legal personal representative of her deceased husband, declared she was entitled to the sum therein expressed, as the share of her deceased husband, for her sole absolute use & benefit.

In reversing the decree of the Supreme Ct. at Calcutta, the Judicial Committee directed (1) the sum in question to be paid to applt.; (2) interest, at the usual rate allowed by the Supreme Ct., should be allowed from the death of the widow.—*SREEMUTTY RABUTTY DOSSEE v. SIBCHUNDER MULLICK* (1854), 6 Moo. Ind. App. 1; 19 E. R. 1, P. C.

535. To express opinion as to intention of order.—Appeal pending from decision on order.—Their Lordships, pending an appeal from an order of the High Ct. in execution of an Ord. in Council, expressed their opinion as to the intention of the said Ord. in Council in a sense contrary to the High Ct.—*Ex p. YARLAGADDA DURGA (RAJA), YARLAGADDA MATLIKARJUNA PRASADA NAYADU (RAJA) v. YARLAGADDA DURGA PRASADA NAYADU (RAJA)* (1903), L. R. 31 Ind. App. 64, P. C.

(b) *To consider Points not raised in Court below.*

536. General rule.—*Seemle*: objections cannot be made to a decree at the hearing before the Privy Council, that have not been made in the

PART X. SECT. 3, SUB-SECT. 10.—C. (b).

536 i. General rule.—The Privy Council will not entertain a question

not raised at the trial, & on which, if it had been raised, it was open to the other party to have called evidence in answer to the case made against him.—*TORONTO & YORK RADIAL RY. v.*

TORONTO (1916), 38 O. L. R. 88; 27 O. W. R. 414.—*CAN.*

536 ii. ———.—It is contrary to the practice of the Judicial Committee to

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ct. below.—**FRANKLAND v. M'GUSTY** (1830), 1 Knapp, 274; 12 E. R. 324, P. C.

Annotations.—**Mentd.** *Re Wardley & Hodson, Ex p. Thorpe* (1836), 2 Deac. 16; *Leverson v. Lane* (1862), 13 C. B. N. S. 278; *Re Riches & Marshall's Assignment* (1864), 10 L. T. 667.

537. —.]—The Judicial Committee, in appeals from the native cts. of India, will look to the broad principles of justice & discourage mere technical objections, which do not affect the merits of the case, & more especially will discountenance the introduction of objections that may have occurred in the course of litigation but were not raised at the commencement of the suit.—**RAMNAD (ZEMINDAR OF) v. YETIAPPOORAM (ZEMINDAR OF)** (1859), 7 Moo. Ind. App. 441; 19 E. R. 375, P. C.

538. —.]—Though the Judicial Committee is always disposed to give a liberal construction to the pleadings in the Indian cts., so as to allow every question fairly arising on the case made by the pleadings to be raised & discussed by the suit. *vel.* under this liberality of construction, pltf. cannot be entitled to relief upon facts or documents not stated or referred to by him in his pleadings.—**MAHOMED ZAHOR ALI KHAN v. THAKOORANEE RUTTA KOORER** (1868), 16 W. R. 845, P. C.

539. —.]—Where deft. has by his answer put his defence upon a certain ground, & issues for trial are framed by the ct. to meet the case so pleaded, the Judicial Committee, as the final ct. of appeal, will not determine the appeal upon any other issues or grounds which have not been taken or considered in the cts. below.—**SREEMUTTY DOSSEE v. LALUNMONEE (RANEE)** (1869), 12 Moo. Ind. App. 470; 20 E. R. 117, P. C.

540. —.]—**LYALL v. JARDINE**, No. 351, ante.

541. —.]—The Judicial Committee, though not holding parties strictly to their pleadings, will not allow defences to be set up on appeal which have not been suggested in the pleadings, or called to the attention of the cts. below.—**GARDEN GULLY UNITED QUARTZ MINING CO. v. McLISTER** (1875), 1 App. Cas. 39; 33 L. T. 408; 24 W. R. 744, P. C.

Annotation.—**Mentd.** *Re Alma Spinning Co., Bottonley's Case* (1880), 16 Ch. D. 681.

542. —.]—The Judicial Committee will not entertain grounds of appeal which were not taken in the ct. below.—**LONDON CHARTERED BANK OF AUSTRALIA v. WHITE** (1879), 4 App. Cas. 413; 48 L. J. P. C. 75, P. C.

543. —.]—The Judicial Committee will not allow points which were not taken in the court below to be raised for the first time before them.—**RANDWICK BOROUGH COUNCIL v. AUSTRALIAN CITIES INVESTMENT CORPN.**, [1893] A. C. 322; 62 L. J. P. C. 116; 68 L. T. 771, P. C.

544. —.]—In a suit by appls., being

allow a point to be raised on appeal before them which had not been discussed in the cts. below.—**JIT SINGH v. MAHARAJ SINGH** (1911), 1 L. R. 34 All. 57.—IND.

536 III. —.]—The hearing of the appeal being *ex p.*, the Judicial Committee refused to depart from the established practice of not allowing the applt. to make a new case based on grounds not urged in the cts. in L., not specified in the petition to the High Ct. for leave to appeal, & not suggested in the reasons contained in the case for applt.—**SONI RAM v. KANHAIYA LAL** (1913), 17 C. W. N. 605; 1 L. R. 35 All. 227.—IND.

536 IV. —.]—**JAGAVEKRA (RAJAH) R. V. E. IYEN AVERGAL (MAHARAJAH) v. ALAWARASA ASAMI** (1918), 23 C. W. N. 225.—IND.

546 I. —.]—*Point raised in first court—But not in second court.*—It is a well settled rule of practice of the Judicial Committee that an applt. shall not be allowed to ask to have a decree set aside on the ground that the ct. below wrongly accepted a decision of the subordinate ct., if he himself has never brought that decision before the ct. below for its consideration. The Judicial Committee ought not to be called upon to adjudicate finally upon matters, without having the

mortgagees of a division of resps.' railway, & its revenues, for a sale of the division & for a receiver & other relief, their Lordships declined to hear argument as to the validity of a mtge. or of the power of sale, or of the mtgees.' right of entry, the pleadings & evidence not raising those issues, & the cts. below not having adjudicated thereon.—**GREY v. MANITOBA & NORTH WESTERN RY. CO. OF CANADA**, [1897] A. C. 254; 66 L. J. P. C. 60, P. C.

545. —.]—(1) Where there are concurrent findings of fact as to testator's competence & freedom from undue influence, they will not be disturbed unless it be made plain that there has been a miscarriage of justice, or at least that the evidence has not been adequately weighed or considered.

(2) Their Lordships will not entertain a new point which might have been met by evidence in the cts. below.—**ARCHAMBAULT v. ARCHAMBAULT**, [1902] A. C. 575; 71 L. J. P. C. 131; 87 L. T. 404, P. C.

546. —.]—*Point raised in first court—But not in second court.*—Appls. having omitted in their appeal to the High Ct. to question the finding of the first ct. in execution proceedings that they had waived the irregularity of an under-estimate of value in the sale proclamation:—*Held*: they were precluded from questioning that finding of fact in the appeal before their Lordships.—**DHANUKDIHARI SINGH v. MAHABIR PERSHAD SINGH** (1907), L. R. 34 Ind. App. 164, P. C.

547. —.]—In a suit by resps., who derived title under a Dominion lease:—*Held*: appls. as defts. in possession could not object thereto as not having been granted under the Great Seal, since that point had not been put forward in the ct. below.—**VANCOUVER CITY v. VANCOUVER LUMBER CO.**, [1911] A. C. 711; 81 L. J. P. C. 69; 105 L. T. 461, P. C.

548. —.]—Upon an appeal to the Privy Council a contention based upon a rebuttable presumption cannot be raised if it has not been raised in India, & an issue settled.—**RAMNAD (RAJA) v. SUNDARA PANDIYASAMI TEVAR** (1918), 46 L. R. Ind. App. 64, P. C.

549. Question of law—Of country from which appeal comes.—The Judicial Committee are bound to take notice of the law of the country from which the appeal comes, & to decide according to it, although it has not been noticed in the ct. below.

When, therefore, a court below had decided upon the ground of evidence of which they had cognisance in another suit, but which was not legally before them in the suit in question, their decree was supported on the ground that applt., who was pltf. before them, had, according to the law of the country, no right to sue.—**SUMBOOCHUNDER CHOWDRY v. NARAINI DIBEH & RAMKISHOR** (1835), 3 Knapp, 55; 12 E. R. 568, P. C.

Annotation.—**Mentd.** *Nagindas Bhugwandas v. Bachoo Hurkissondas* (1915), 32 T. L. R. 132.

advantage of knowing and weighing the view taken by the judges of the ct. below.—**KALYAN DAS v. MAQBUL AHMAD** (1918), 1 L. R. 40 All. 497.—IND.

k. Question as to authority of agent—Concurrent judgments in courts below—Objection not raised below.—Where the sole question raised in cts. in L. was whether or not documents were signed by deft.'s agent, as to which fact both cts. below were concurrent, the Privy Council declined to allow deft. to raise the question as to the agent's authority to bind his principal.—**BABOO LALL v. LUTTOO RAM** (1872), 18 W. R. 233.—IND.

550. — [Where applt., the exor. of R., filed a petition praying for the sale of the real estate of C. in order to pay off an accumulated debt alleged to have accrued to R. as C.'s exor., a decision as to whether R. or applt. was entitled to a charge upon the real estate in respect of any sum that might be due upon the accounts was postponed, that decision depending upon the will, which was not formally placed before the Judicial Committee, & upon the law of Jamaica on the point, which was not specifically noticed in the ct. below.—*SMITH v. O'GRADY* (1870), 1 L. R. 3 P. C. 311; 7 Moo. P. C. C. N. S. 108; 39 L. J. P. C. 63; 23 L. T. 476; 19 W. R. 22; 17 E. R. 41, P. C.

551. — **Supported by facts.**—[A ct. of ultimate appeal ought not to entertain a question of law raised for the first time before it, unless it is satisfied beyond doubt that the facts, if fully investigated, would have supported the new plea.—*CONNECTICUT FIRE INSURANCE CO. v. KAVANAGH*, [1892] A. C. 473; 61 L. J. P. C. 50; 67 L. T. 508; 57 J. P. 21; 8 T. L. R. 752, P. C.

Annotations :—*Consd.* *Yorkshire Insee. v. Craine*, [1922] 2 A. C. 541. *Refd.* *Banbury v. Bank of Montreal*, [1918] A. C. 626; *North Staffordshire Ry. v. Edge*, [1920] A. C. 254.

552. Right of party to sue.—[*Semble*: the right of a party to institute a suit as heir of an original grantee, not having been disputed in the cts. below, cannot be questioned before the Judicial Committee.—*MILLS v. MODEE PRESTON-JEE KHOORSEED-JEE* (1838), 2 Moo. Ind. App. 37; 18 E. R. 216, P. C.

Annotation :—*Mentd.* *Kirkland v. Modee Prestonjee Khoor-seedjee* (1843), 3 Moo. Ind. App. 220.

553. Technical objection.—[This ct. will not entertain a technical objection which was not taken in the court below, where it might have been amended.—*DHURM DAS PANDEY v. SHAMA SOONDRI DIBIAH (MUSUMAT)* (1843), 3 Moo. Ind. App. 229; 18 E. R. 484, P. C.

Annotations :—*Mentd.* *Gopeekrist Gosain v. Gungapersaud Gosain* (1854), 6 Moo. Ind. App. 53; *Ramundoss Mookerjee v. Mussanutt Tarinee* (1858), 7 Moo. Ind. App. 169.

554. — [The Privy Council will not entertain a purely technical objection to a party's right of action which has not been made in the ct. below.—*BANK OF BENGAL v. MACLEOD* (1840), 7 Moo. P. C. C. 35; 5 Moo. Ind. App. 1; 14 L. T. O. S. 285; 13 Jur. 945; 13 E. R. 792, P. C.

Annotations :—*Mentd.* *Jonmenjoy Coondoo v. Watson* (1884) 9 App. Cas. 561; *Lewis v. Ramsdale* (1886), 53 L. T. 179; *Hambro v. Burnand* (1904), 20 T. L. R. 398.

555. — [This ct. will not entertain technical objections, not taken in the ct. below, when they are merely of form, & do not affect the substance of the matter in controversy.—*ORPHANS' BOARD v. KRARGELIUS* (1855), 9 Moo. P. C. C. 438; 14 E. R. 364, P. C.

556. — **Want of parties.**—[*ORPHAN BOARD v. VAN REENEN*, No. 357, ante.

557. — [An objection for want of parties to a bill ought to be made in the ct. below. A ct. of appeal will not treat the suit as defective when no such objection was taken in the colonial ct.—*BOWES v. TORONTO CITY* (1858), 11 Moo. P. C. C. 463; 14 E. R. 770, P. C.

Annotation :—*Mentd.* *Vyse v. Foster* (1872), 8 Ch. App. 315, n.

558. — **Wrong party sued.**—(1) In an action against the govt. of a colony to obtain a grant of an indefeasible title to land in accordance with the judgment of a land ct., if the Judicial Committee are of opinion that a reasonable objection exists to the title tendered they will not compel the acceptance of such title, though the particular

objection may not have been relied on in the ct. below.

(2) The right of pltf. to appeal against the judgment could not be prejudiced by the objection that the action had not been brought against the right party, such objection not having been taken in the ct. below.—*WEBB v. WRIGHT* (1883), 8 App. Cas. 318; 52 L. J. P. C. 40; 49 L. T. 145, P. C.

559. — **Proceedings out of time.**—[On the argument of an appeal to the Judicial Committee in an action of trespass for interrupting the flow of a stream to resp.'s land, applts. contended that the action was not maintainable because it was not brought within three months of the trespass complained of, & because no notice of action had been given as required by a colonial statute :—*Held*: as the points had not been raised in the ct. below, applts. could not be allowed to take them on appeal.—*ADELAIDE CORPN. v. WHITE* (1886), 55 L. T. 3, P. C.

560. — **Proceedings not in nature of regular suit.**—[An objection raised the first time at the hearing of the appeal before the Privy Council, that the govt.'s right to sue was barred from lapse of time, sustained; the proceedings in India before the Revenue Collector and Special Commissioner not being in the nature of a regular suit.—*DHEERAJ RAJA MAHATAB CHUND BAHADUR (MAHA RAJA) v. BENGAL GOVERNMENT* (1850), 4 Moo. Ind. App. 166; 18 E. R. 777, P. C.

Annotation :—*Mentd.* *Hurryhurr Mookhopadhyay v. Madhub Chunder Baboo, Nobokishito Mookerjee v. Koylaschundro Buttacharjee* (1871), 14 Moo. Ind. App. 152.

561. — **No notice of action given.**—[*ADELAIDE CORPN. v. WHITE*, No. 559, ante.

562. Examination of party's witness in absence of other party.—[The examination of a material witness of pltf. in the absence of deft., his vakeel having been removed & no other vakeel then acting for him, is such an irregularity that if objected to at the proper time it would be fatal to the reception of such evidence. But where no objection was urged during the trial, or until an appeal was interposed, on appeal to the Judicial Committee :—*Held*: the objection came too late, & could not be sustained, as, notwithstanding such irregularity, that fact did not taint the whole proceedings so as to prevent pltf. recovering upon the other evidence which was sufficient to establish his case.—*BOMMARAUZE BAHADUR (RAJAH) v. RANGASAMY MUDALY* (1855), 6 Moo. Ind. App. 232; 19 E. R. 86, P. C.

563. Patent on face of proceedings.—[An objection not raised in the cts. below cannot be taken in the appellate ct., unless it is patent upon the face of the proceedings, so that the appellate ct. can take judicial notice of the objection.—*DEVINE v. HOLLOWAY* (1861), 14 Moo. P. C. C. 290; 4 L. T. 190; 9 W. R. 642; 15 E. R. 314, P. C.

564. Lower court wrong in procedure—No surprise.—[If the ct. below has been wrong in its procedure, the Judicial Committee are not precluded, in cases where there has been no surprise, from deciding any question on its merits, & when the proper issues have been settled, & the real question of rights between the parties has been fairly tried, it is contrary to the practice of the Committee to give effect to nice & critical objections founded on the inaccuracy of an Indian pleading.—*BIJUGWANDEEN DOOHEY v. MYNA BAE* (1868), 11 Moo. Ind. App. 487; 16 W. R. 588; 20 E. R. 184, P. C.

Annotations :—*Mentd.* *Rajah Chelkani Venkayamma Garu v. Rajah Chelkani Venkataramanayamma Bahadur Garu* (1902), 18 T. L. R. 685; *Shoo Shankar Lal v. Debi Sahai* (1903), 19 T. L. R. 570.

Sect. 3.—Practice and procedure: Sub-sect. 10, C. (b) & (c).]

565. Formally abandoned before hearing in lower court.—The Judicial Committee will not allow a point which has been formally abandoned in the ct. below to be argued before them.—*LAGESSE v. LAGESSE* (1873), 1 L. R. 4, P. C. 553; 9 Moo. P. C. C. N. S. 399; 17 E. R. 565; *sub nom. LAGESSE v. ALLARD*, 42 L. J. P. C. 37; 21 W. R. 369, P. C.

566. —. —. (1) Where the merits of a case have been brought fully before a ct. which has jurisdiction to deal with it, the Judicial Committee will not reverse the judgment of that ct. on the ground that the proceedings were commenced in an informal manner.

(2) The Judicial Committee will not allow points which were deliberately abandoned in the ct. below to be argued before them.—*PALGRAVE GOLD MINING Co. v. McMILLAN*, [1892] A. C. 160; 61 L. J. P. C. 85; 67 L. T. 425, P. C.

567. Objection to title.—*WEBB v. WRIGHT*, No. 558, *ante*.

568. Illegality of contract.—It is the right & duty of the ct. at any stage of a cause to consider, & if it be proved, to act upon an illegality which may be fatal to the contention of either party to the litigation, so as to prevent the process of the ct. from being used to establish a claim which ought not to be enforced. But in a case in which a ct. of appeal, after argument & before judgment, raised of its own motion the question of the illegality of the contract upon which the action was brought, which had not been raised in argument before them, the Judicial Committee, though considering the circumstances very suspicious, declined to give judgment upon questions which had not been raised in the ct. below, & sent the case back for a new trial.—*CONNOLLY v. CONSUMERS' CORDAGE Co.* (1903), 89 L. T. 347, P. C.

569. Misdirection of jury—Not objected to at trial.—In an action for damages for the death of applts.' son while acting as engineer of resps.' lumber train, resps. were charged with negligence in respect of the train having been equipped with defective brakes & an incompetent brakeman, while deceased was charged with contributory negligence in jumping from the train. The jury found for applts., but a new trial was ordered by the Supreme Ct. One judge was dissatisfied with the verdict on the ground of misdirection in regard to contributory negligence, & another judge held, contrary to both his colleagues, that the damages were excessive:—*Held*: the order must be reversed. It was too late for resps. to rely on misdirection which they had not objected to at the trial or in the notice of appeal or in oral argument before the Supreme Ct.—*WHITE v. VICTORIA LUMBER & MANUFACTURING Co., LTD.*, [1910] A. C. 606; 80 L. J. P. C. 38; 103 L. T. 323, P. C.

Annotation:—*Refd.* *International Sponge Importers v. Watt*, [1911] A. C. 279.

570. Raised on proved facts.—Captors will not be allowed to succeed upon appeal by raising on the facts a case which was not presented in the Prize Ct.—*THE KRONPRINZESSIN VICTORIA*, [1919] A. C. 261; 88 L. J. P. 17; 120 L. T. 75; 35 T. L. R. 74; 14 Asp. M. L. C. 391, P. C.

Annotations:—*Mémt.* *The Kronprins Gustaf*, [1919] P. 182; *The Noordam*, [1919] P. 57; *The Hilding & Other Vessels (Part Cargoes Ex)* (1920), 37 T. L. R. 199; *The Kronprinsessan Margareta, The Parana, etc.*, [1921] 1 A. C. 486.

Appeals in prize proceedings generally, see PRIZE LAW & JURISDICTION.

In admiralty appeals, *see* ADMIRALTY, Vol. I., p. 239, Nos. 1657–1659.

(c) *To remit.*

571. To whom ordered—Law officers—To prepare instructions to Lieutenant-Governor of colony.—

The petition prayed for a *mandament* of substantial relief. The Privy Council referred the petition to the Advocate-General & Solicitor-General, to prepare instructions to the Lieutenant-Governor of the colony, in accordance with the law & practice of the colony & the prayer of the petition.—*Re DAWSON & RAIFE* (1832), 3 Moo. P. C. C. 443, n.; 13 E. R. 180, P. C.

Annotation:—*Refd.* *Re Butts* (1841), 3 Moo. P. C. C. 411.

572. — Barrister—Question of disputed account.—(1) An action may be maintained on an order by the Judicial Committee of the Privy Council for the payment of costs, under Judicial Committee Acts, 1833 (c. 41), & 1843 (c. 38).

(2) On an appeal to the Judicial Committee of the Privy Council, the question, being one of disputed account, was referred to a barrister, who reported in favour of applt. The Judicial Committee adopted the report, determined the property to belong to applt., & ordered that a certain sum incurred by him for costs during the proceedings in this country should be paid to him by resps. This report having been confirmed by the Queen:—*Held*: an action might be maintained for this money.—*HUTCHINSON v. GILLESPIE* (1856), 11 Exch. 798; 25 L. J. Ex. 103; 26 L. T. O. S. 275; 2 Jur. N. S. 403; 1 W. R. 302; 156 E. R. 1055.

Annotations:—*As to* (1) *Consd.* *Marbella Iron Ore Co. v. Allen* (1878), 47 L. J. Q. B. 601. *As to* (2) *Refd.* *Marbella Iron Ore Co. v. Allen* (1878), 47 L. J. Q. B. 601; *Bailey v. Bailey* (1881), 13 Q. B. D. 855; *Seidon v. Wilde*, [1910] 2 K. B. 9.

573. — Experts—Division of property in litigation.—In a suit for partition of a villa the judge of first instance in Malta visited the villa & gave judgment, referring to a scheme proposed by two experts, & deciding against a partition. The Ct. of Appeal in Malta affirmed this judgment. In argument for applts. before the Judicial Committee, it was suggested that some scheme of partition, differing from that proposed by the experts, might be adopted:—*Held*: applts. having rested their case in the ct. below on the scheme proposed by the experts, it was now too late for them to suggest any other.

The Judicial Committee will be extremely slow to interfere with the exercise of judicial discretion, especially when the ct. below has had the advantage of personally inspecting the property with regard to which the question, turning on the nature of the property, has arisen.—*BUGEJA v. CAMILLERI* (1870), 1 L. R. 3 P. C. 258; 7 Moo. P. C. C. N. S. 35; 23 L. T. 122; 17 E. R. 13, P. C.

574. Grounds for ordering—Not investigation of further evidence—Available in court below.—The Judicial Committee will not send back a case to a ct. below for further investigation, on the ground that further evidence might now be produced before it, when the party has had opportunities of bringing forward that evidence below, of which he has not availed himself.—*Row (RAJA) v. ENOOGOONTY SOORIAH* (1834), 2 Knapp, 259; 12 E. R. 479, P. C.

575. — Wrong rejection of evidence.]—In a suit for possession of estates defts. denied the title of pltf. alleging he was a spurious & supposititious child, & tendered fifty-eight witnesses to prove that fact. The Zillah Ct. having taken the depositions of thirty of these witnesses, refused to permit the remaining 28 to be examined, on the ground that, being to prove the facts deposed to by those already examined, it was unnecessary to take their depositions, & ultimately, decided in favour of pltf. The Judicial Committee remitted the case, being of opinion that the refusal to admit the examination of the witnesses tendered was irregular, & no decision could be come to upon the merits under such circumstances.—*JESWUNT SING-JEE v. JET SING-JEE* (1841), 2 Moo. Ind. App. 424; 18 E. R. 361, P. C.; *subsequent proceedings, sub nom. JESWUNT SING-JEE UBBY SING-JEE v. JET SING-JEE UBBY SING-JEE* (1844), 3 Moo. Ind. App. 245, P. C.
*Annotation:—*Reid. *Modée Kaikhooscrow Hornusjee v. Cooverbhacc* (1856), 6 Moo. Ind. App. 418.

576. — Documents suppressed by judge.—Not discovered until after transmission of appeal.]—*JUYEER-BHAE v. VURUJ-BHAE*, No. 328, *ante*.

577. — Reversal of judgment of lower court.]—In reversing the judgment of the ct. below, the Judicial Committee (1) remitted the cause with certain directions, (2) left the question of the allowance of costs in the discretion of the ct. below.—*GOPEEKRISHN GOSAIN v. GUNGAPERSAUD GOSAIN* (1851), 6 Moo. Ind. App. 53; 19 E. R. 20, P. C.

*Annotations:—*Generally, *Mentd.* *Moulvie Sayyud Uzbur Ali v. Mussumat Bebee Utaf Fatima* (1869), 13 Moo. Ind. App. 232; *Nawab Azimut Ali Khan v. Hurdwarce Mull* (1870), 13 Moo. Ind. App. 395.

578. — Refusal of lower court to hear case on merits.]—(1) In an action relating to real estate in the Island of Jersey founded on a "Clameur de Haro" by the A.-G. and his "ajoint" against deft., to undergo the fine of "Clameur de Haro," deft. raised certain preliminary questions, which were overruled, & the inferior number of the Royal Ct., upon the merits, imposed a fine upon deft. He appealed upon the preliminary questions & the merits, & the inferior number of the ct. held that as there was no appeal in respect of the fine, the A.-G. ought not to be continued in the appeal. The full number of the Royal Ct. held that the A.-G. was a necessary party, & refused to hear the appeal either upon the preliminary points or the merits. The Judicial Committee, in the circumstances of the case, remitted the cause to the full number of the Royal Ct. to be heard upon the merits, applt. consenting to abandon the preliminary questions.

(2) The appeal being abated by the death of resp., was revived by applt. by making deceased's heir resp. in his stead.—*AHIER v. WESTAWAY* (1855), 9 Moo. P. C. C. 395; 14 E. R. 347, P. C.

579. — Question of disputed account.]—On a question of disputed account, the cause was remitted to the ct. below to calculate interest upon the debt according to the Dutch Roman Law in force in the Colony.—*MAXWELL v. DEARE* (1853), 8 Moo. P. C. C. 363; 23 L. T. O. S. 1; 1 C. L. R. 776; 14 E. R. 138, P. C.

580. —]—*HUTCHINSON v. GILLESPIE*, No. 572, *ante*.

581. — Evidence unsatisfactory.]—In an action of ejectment to recover real estate, pltf. claimed as heirs. The issue directed by the ct. was, whether the party in possession, under a decree made in a summary suit, was legitimate. In such circumstances it was decided that, as the title of pltf. depended upon the illegitimacy of deft., they were bound to prove by sufficient general evidence, their heirship, in order to throw upon deft. the onus of proving his legitimacy. The evidence upon that issue being unsatisfactory, the case was remitted to India for further proof.

It is the duty of a judge in India trying a suit, to state in his judgment the grounds upon which he has arrived at the conclusion he has formed upon the evidence; & not simply to state, in a general manner, that a party was entitled, as such a course does not afford the appellate ct. the assistance it is bound to expect from the ct. below.—*KHAJAH MOHAMED GOUHUR ALI KHAN v. ASHRUFUNNISA* (1863), 9 Moo. Ind. App. 496; 19 E. R. 821, P. C.

582. — Assessment of damages.—Not where all evidence before Judicial Committee.]—*MUDHUN MOHUN DOSS v. GOKUL DOSS*, No. 525, *ante*.

583. — Decision in lower court based on decision in previous action.—Previous decision reversed by Judicial Committee.]—The High Ct. dismissed an appeal from the Zillah Ct. on the ground, that it involved the same question as had been decided by them in another suit brought by the pltf. in respect of the validity of a deed. The decision in the prior suit was, on appeal, reversed by the Judicial Committee. In such circumstances, on the appeal from the last decision coming on for hearing *ex p.*, their Lordships, with the consent of the applt., remitted the case to the High Ct., with a declaration that the deed was valid, & with directions that, if the resp. did not appear within a reasonable time to be fixed by the High Ct., to dismiss the appeal from the Zillah Ct., & in the event of the resp. appearing, then to hear the case on the merits.

As to costs:—*Held*: that if the resp. failed to appear in the High Ct. or if the appeal should be decided against him, the resp. was to pay the applt.'s costs of the appeal in England, & the costs, if any, paid under the decree of the High Ct. were to be repaid to him.—*KALEEPERSHAD TEWARREE v. LALLA BINDA LALL* (1869), 12 Moo. Ind. App. 343; 20 E. R. 368, P. C.

584. — Not after twenty-one years' litigation.—With all means of proving case.]—Suit to recover balance due on account taken on the winding-up of a partnership transaction between two firms. The books, which were kept at different places where the partners traded, were not satisfactory, but the cts. in India allowed certain items to be due to pltf. On appeal to the Judicial Committee:—*Held*: although it was not clear whether those items, in taking the account, ought to have been allowed, yet as pltf., who had had every means of proving their case, had failed to establish their claim against the deft., the ct. of last resort would not on that ground, after 21 years' litigation, remit the case to India for further inquiry & investigation to enable pltf. to amend their case.—*SETH LUKHMEH CHUND RAO v. SETH*

PART X. SECT. 3, SUB-SECT. 10.—
C. (c).

575 i. Grounds for ordering.—Wrong rejection of evidence.]—*SHERE BAHADUR SING v. THAKURAIN DARRAO KUAR* (1877), 1 L. R. 3 Cal. 645.—IND.

1. — Question of pleading.—For amendment of pleas.]—*WALLACE v. MCSWENEY* (1868), 1 L. R. 2 P. C. 180.—CAN.

m. — Question of form of decree not raised in court below.]—The Privy Council, while affirming the decree of

the ct. below observed that a question as to the form of the decree ought not to have been raised in the Privy Council & remitted the case to the ct. below to amend the decree in conformity with their judgment.—*LALA SHAM SOONDUR LAL v. SOORAJ LAL*, 26 W. R. 48.—IND.

Sect. 3.—Practice and procedure: Sub-sect. 10, C. (c) & D. (a).]

INDRA MULL (1870), 13 Moo. Ind. App. 365; 20 E. R. 588, P. C.

585. — Not to consider further division of property in litigation—No alternative division proposed in lower court by applicant.]—BUGEJA v. CAMILLERI, No. 573, *ante*.

586. Effect of order—How decision of lower court after remittal questioned.]—When the Privy Council has sent a reference to a ct. below for them to certify, as to a point of their practice, their certificate cannot be disputed, unless a petition praying for a fresh reference is presented, & supported by affidavits disputing the accuracy of the certificate.—LE QUESNE v. NICOLLE (1830), 1 Knapp, 257; 12 E. R. 316, P. C.

587. — Remittal by reason of wrong rejection of evidence—Evidence admitted after remittal but no adjudication made—Power of Judicial Committee when evidence transmitted to England.]—Under an order of reference, the Judicial Committee, upon an appeal coming before them, remitted the case, by reason of the rejection of certain evidence, to the ct. below, with directions to take the evidence rejected. The ct. in India, upon the remit, examined such of the witnesses before tendered as were produced, but made no adjudication in the cause, & transmitted the further evidence to England. No fresh order of reference was made to the Judicial Committee. Upon the appeal, with the further evidence, coming before them, their Lordships, under the circumstances, were of opinion that they had no jurisdiction to entertain the case, the original order of reference having been exhausted by the remit. But upon a special petition for such purpose, all parties consenting, the Ord. in Council directing the remit to India was varied & amended, by being made a mere reference to the Sudder Dewanny Adawlut to take evidence, without throwing any duty upon that ct. to reconsider or adjudicate upon the cause, but to remit the same for the consideration of the Lords of the Committee.—JESWUNT SING-JEE UBBY SING-JEE v. JET SING-JEE UBBY SING-JEE (1844), 3 Moo. Ind. App. 245; 18 E. R. 490, P. C.

Annotation:—Mentd. Ashrufood Dowlah Ahmed Hossein Khan Bahadour v. Hyder Hossein Khan (1866), 11 Moo. Ind. App. 94.

D. Grounds for allowing or dismissing Appeal.

(a) Principles on which Judicial Committee act.

588. Substantial merits regarded—Not mere matters of form—Appeals from courts in which Hindoo & Mahomedan law is the rule—Forms of pleading wholly different.]—In reviewing proceedings of the native cts. in India, where the Hindoo or Mahomedan law is the rule, & the form of pleading wholly different from that in use in cts. where the law of England prevails, the Judicial Committee will look to the essential justice of the case, without considering whether matters of form have been strictly attended to.—GHIRDHAREE SING v. KOOLAHUL SING (1840), 2 Moo. Ind. App. 344; 18 E. R. 330, P. C.

589. — — —.]—*Semble*: the ct. will not encourage a mere objection of form that does not affect the substantial merits of the case.—MOKUDIMS OF KUNKUNWADY v. ENAMDAR BRAHMINS OF SOORPAL (1845), 3 Moo. Ind. App. 383; 18 E. R. 544, P. C.

590. — — — Precise terms of pleading disregarded.]—The Privy Council will exercise its discretion in deciding a case on its merits, without regarding strictly the precise terms of the pleadings.—MCLEAN v. MCKAY (1873), L. R. 5 P. C. 327; 29 L. T. 352; 21 W. R. 798, P. C.

Annotations:—Mentd. Fairclough v. Marshall (1878) 48 L. J. Q. B. 146; *Re Nisbet & Pott's Contract*, [1905] 1 Ch. 391.

591. — — — Proceedings begun in informal manner.]—PALGRAVE GOLD MINING CO. v. McMILLAN, No. 586, *ante*.

592. Rights of parties altered by provincial legislature—Pending appeal.]—The Judicial Committee will not notice any alteration of rights that may have taken place between the parties in consequence of an Act of the provincial legislature, but which does not appear on the record.—DONEGANI v. DONEGANI (1835), 3 Knapp, 63; 3 State Tr. N. S. App. 1282; 12 E. R. 571, P. C.

Annotations:—Mentd. *Re Adam* (1837), 1 Moo. P. C. C. 460; *A.-G. for Canada v. Cain*, *A.-G. for Canada v. Gilhula*, [1906] A. C. 542.

593. Objection to competency of appeal—No application to dismiss appeal.]—*Semble*: if an appeal is incompetent, resp. should move on petition to dismiss same on such ground, & not wait till the hearing to object to its competency.—SHIRE v. SHIRE (1845), 5 Moo. P. C. C. 81; 13 E. R. 420, P. C.

594. — — —.]—TRONSON v. DENT, No. 319, *ante*.

595. — — —.]—It is too late for resp. at the hearing of the appeal to object to its competency, on the ground that the amount in dispute was below the appealable value.—NILMADHUB DOSS v. BISHUMBER DOSS (1869), 13 Moo. Ind. App. 85; 20 E. R. 484, P. C.

596. — — —.]—It is too late for resp. at the hearing to take an objection to the competency of the appeal, on the ground that the subject-matter of the suit did not involve the prescribed appealable value, such objection not having been taken in resp.'s case. The proper course would have been for resp. to move in the first instance to dismiss the appeal on that ground.—ALDRIDGE v. CATO (1872), L. R. 4 P. C. 313; 9 Moo. P. C. C. N. S. 70; 17 E. R. 440, P. C.

597. — — —.]—Art. 1178 of Canadian Code of Civil Procedure limits the cases in which an appeal lies as of right to the Judicial Committee from a final judgment of the Ct. of Q. B.

Upon a case coming on for hearing, a preliminary objection was taken by resp. that it did not fall within any of the clauses of that art. There had been no special application for leave to appeal, & resp. had lodged his case for the hearing:—*Held*: the proper course would have been for resp. to petition as early as possible, before the cases were lodged, to have the appeal dismissed on the ground of irregularity, but as he had not done so, & appt. might have been led to suppose that the objection was waived, their Lordships should give him the option of having the appeal dismissed without costs, or of now presenting a petition for special leave to appeal.—SAUVAGEAU v. GAUTHIER (1874), L. R. 5 P. C. 494; 30 L. T. 510; 22 W. R. 667, P. C.

598. Leave to appeal granted on unfounded allegations—As to appealable value.]—The Royal Instructions regulating appeals from Barbadoes to the Queen in Council, limit the right of appeal to cases in which the subject-matter involved

PART X. SECT. 3, SUB-SECT. 10.—
D. (a).

n. Substantial merits regarded—No assumption that summing up of trial

judge was wrong.]—In the absence of information as to the summing up of the trial judge, the Judicial Committee will not assume that the summing up

was wrong, notwithstanding ambiguous expressions therein.—COLONIAL BANK OF AUSTRALIA v. EITERSHANK (1875), 4 V. L. R. 239.—AUS.

amounts to £300. The Ct. at Barbadoes held, that certain accounts & documents sought to be recovered in an action of detainee, were of no value in themselves, & refused leave to appeal against a judgment of nonsuit in the action. Upon a petition for leave to appeal, founded upon an allegation that the value of the accounts & securities exceeded £300, their Lordships granted special leave to appeal. When the appeal came on for hearing it appeared that the allegation as to the value of the accounts & documents was unfounded in fact, & unsupported by evidence, upon which their Lordships stopped the case, & dismissed the appeal with costs.—*WILSON v. CALLENDER* (1854), 9 Moo. P. C. C. 100; 14 E. R. 235, P. C.

Annotation :—*Reid. Sibnarain Ghose v. Hulodhur Doss* (1854), 9 Moo. P. C. C. 355.

599. — **Leave granted ex parte.**—*SIBNARAIN GHOSE v. HULODHUR DOSS*, No. 407, *ante*.

600. **Judgment without appellant's case being heard.**—*SIEMENS v. BUFE* (HEIRS OF), No. 381, *ante*.

601. **Objection founded on Statute of Frauds—Not pleaded.**—An objection to an agreement, as being void by Stat. Frauds, by reason of not being in writing should be pleaded by the answer, & cannot be entertained at the hearing of an appeal.—*DANIEL v. TROTMAN* (1863), 1 Moo. P. C. C. N. S. 123; 2 New Rep. 92; 8 L. T. 522; 9 Jur. N. S. 583; 11 W. R. 717; 15 E. R. 619, P. C.

Annotation :—*Mentd. Re Harriott, Ex p. Fongelley* (1863), 8 L. T. 851.

Statute of Frauds generally, *see* CONTRACT.

602. **Appeal from country in which French law prevails.**—The Judicial Committee will not, unless there be manifest error in a judgment under appeal, overrule decisions pronounced in a country in which the law of France prevails (which must be known & continually acted upon by cts. of law), & in which also the witnesses on both sides reside & may have been more or less known to & seen when under examination by the judges or some of them, who likewise are familiar with the usages & customs of the place in which all the circumstances which formed the subject of the evidence occurred.—*SCOTT v. PAQUET* (1867), L. R. 1 P. C. 552; 4 Moo. P. C. C. N. S. 505; 36 L. J. P. C. 65; 16 E. R. 408, P. C.

603. **No application in lower court for new trial—Leave to appeal granted after both sides**

STACE v. GRIFFITH, No. 387, *ante*.

604. — *—*—The Judicial Committee will not set aside a judgment on the appeal on the ground that the verdict was against the weight of evidence, where the applt. has not availed himself of his right of moving the ct. below for a new trial.—*DAGNINO v. BELLOTTI* (1886), 11 App. Cas. 804; 55 L. T. 497, P. C.

605. — *—*—Where no application for a new trial has been made to the ct. below, the Judicial Committee will not allow an applt. to raise any contention directed to a new trial, but he will be confined to the question whether the findings justify the judgment delivered.—*EMERY (GEORGE D.) Co. v. WELLS*, [1906] A. C. 515; 75 L. J. P. C. 104; 95 L. T. 589, P. C.

Annotation :—*Mentd. Re Rubel Bronze & Metal Co. & Vos*, [1918] 1 K. B. 315.

606. **Nominal damages only awarded.**—The Judicial Committee will not recommend Her Majesty to reverse the judgment of an inferior ct. in a suit in which nominal damages alone are to be recovered.—*GRAUD v. PATERSON* (1869), 38 L. J. P. C. 65; 21 L. T. 200; 18 W. R. 359, P. C.

607. **Matter of discretion—Exercised by Indian**

courts.—The Judicial Committee is always reluctant to interfere with a matter of discretion exercised by the cts. in India, unless it can be shown that the ct. has acted upon an erroneous principle.—*BANK OF HINDUSTAN, CHINA, & JAPAN v. EASTERN FINANCIAL ASSOCN.* (1869), L. R. 2 P. C. 489; 6 Moo. P. C. C. N. S. 114; 13 Moo. Ind. App. 15; 20 L. T. 889; 16 E. R. 669; *sub nom. Re EASTERN FINANCIAL ASSOCN., LTD., BANK OF HINDUSTAN, CHINA, & JAPAN v. EASTERN FINANCIAL ASSOCN.*, 17 W. R. 554, P. C.

Annotations :—*Mentd. Re Commercial Bank Corp. of India & the East* (1869), L. R. 8 Eq. 241; *Re Oriental Inland Steam Co., Ex p. Seinde Ry.* (1874), 9 Ch. App. 557; *Nicholl v. Eberhardt Co.* (1888), 58 L. J. Ch. 399.

608. — **Decision of lower court whether award should be set aside or remitted.**—Where an arbitrator appointed under a statute to value lands taken compulsorily for public improvements made an award bad on the face of it in allowing values to lands which did not in fact attach to them :—*Held* : it was a question for the discretion of the ct., in the whole circumstances of the case, to decide whether the award should be set aside, or remitted to the arbitrator for reconsideration, & the Judicial Committee would not interfere with such discretion unless it has been obviously misused.—*ODLUM v. VANCOUVER CITY* (1915), 85 L. J. P. C. 95; 113 L. T. 795, P. C.

609. — **Miscarriage of justice.**—The Judicial Committee will be very reluctant to interfere with the discretion of the ct. below, even where there has been a great difference of judicial opinion, unless it appears that there has been a miscarriage of justice.—*BALDWIN v. BALDWIN* (1922), 91 L. J. P. C. 208, P. C.

610. **Matter of procedure—Right of appeal to lower court.**—(1) A writ of *certiorari* having been quashed by the Superior Ct. of Lower Canada, an appeal was brought in the Ct. of Q. B. :—*Held* : the Ct. of Q. B. was right in quashing the appeal; for *certiorari* is governed by the consolidated Statutes of Lower Canada, c. 89, & is excepted from appeal.

(2) The Judicial Committee is unwilling, except on strong grounds, to interfere with a judgment on a matter of procedure only.

(3) On an appeal to the Judicial Committee from several orders, one of which only was then dealt with :—*Held* : the costs must be paid by applts., the deposit made by applts. remaining entire to answer the costs of the rest of the appeal.—*BOSTON v. LÉLÉVIRE* (1870), L. R. 3 P. C. 157; 6 Moo. P. C. C. N. S. 427; 39 L. J. P. C. 17; 22 L. T. 735; 18 W. R. 408; 16 E. R. 787, P. C.

Annotations :—*As to* (2) *Consd. Montreal Corp. v. Brown & Springle* (1876), 2 App. Cas. 168. *Generally, Mentd. Thérberge v. Laundry* (1876), 25 W. R. 216.

611. — *—*—Upon a question of procedure, the Judicial Committee will be unwilling to reverse the decision of a colonial ct.—*MONTREAL CORPN. v. BROWN & SPRINGLE* (1876), 2 App. Cas. 168; 35 L. T. 870, P. C.

612. **No substantial error—Merits depending on local Indian custom—& local inquiry before land revenue officers.**—In the absence of substantial error, either in the finding of the facts, or in the principles of law applied, in cases depending on local customs & local inquiry before the Land Revenue officers in Oude, where the proceedings are not strictly conducted, the Judicial Committee will look to the merits & apply the rule not to disturb the judgment appealed from, unless they are satisfied that the judgment is materially wrong.—*HYDER HOSSAIN v. MAHOMED HOSSAIN* (1871), 14 Moo. Ind. App. 401; 20 E. R. 836, P. C.

Sect. 3.—Practice and procedure: Sub-sect. 10, D. (a) & (b) i.]

613. Construction of colonial statutes—Affecting real property in colony—Decisions of colonial courts thereon uniform over long period.]—When the decisions of colonial cts. during a long period of time have been uniform, their Lordships will be much guided by them in considering the construction & effect of a statute affecting the law of real property in the colony.—*KING v. TUNSTALL* (1871), L. R. 6 P. C. 55; 31 L. T. 564; 23 W. R. 365, P. C.

Annotation:—Mentd. Abbott v. Fraser (1874), L. R. 6 P. C. 96.

614. Question of pleading involved.]—On a question of pleading the Judicial Committee will be very reluctant to interfere with the deliberate judgments of the cts. below.—*VERCHÈRES (CURÉ, ETC.) v. VERCHÈRES CORPN.* (1875), L. R. 6 P. C. 330; 44 L. J. P. C. 34; 32 L. T. 178, P. C.

Question of fact involved.]—*See* Sub-sect. 10, D. (b), *post*.

In admiralty appeals.]—*See* ADMIRALTY, Vol. I., pp. 238–241.

(b) *Where Question of Fact involved.*

i. *In General.*

615. General rule.]—When a ct. below has decided upon a case depending upon questions of fact alone, the Judicial Committee will not advise a reversal of their judgment unless there appears some clear distinct point in which they are wrong, although doubts may be entertained as to their correctness.

A superior ct. having affirmed the decree of an inferior ct. with costs, against applt. but not until they had required & taken much evidence in addition to what had been taken below:—*Held*: they ought not to have given costs against applt. & their decree was so far reversed although affirmed in other respects.—*ULRICK SING (BABOO) v. BENY PERSAD* (1831), 2 Knapp, 265; 12 E. R. 481, P. C.

616. —.]—The Judicial Committee is not bound by the decision of a ct. below upon a question of evidence, although it will in general follow it. The fact of a witness having been convicted of perjury in his evidence in a cause under appeal, cannot be used as a ground for reversing the judgment made in it.—*CANEPA v. LARIOS* (1834), 2 Knapp, 276; 12 E. R. 485, P. C.

617. —.]—The ct. will not reverse the finding of a jury or of a ct. that sits as a jury upon a question of fact, unless perfectly satisfied that they were wrong, as, from their knowledge of the local circumstances & the character & appearance of the witnesses, they are better able to form a correct opinion than the appellate tribunal.—*RAMCHURN MULLICK v. LUCHMECHUND RADAKISSEN* (1854), 9 Moo. P. C. 46; 14 E. R. 215; *sub nom.* MULLICK v. RADAKISSEN, 23 L. T. O. S. 25; *sub nom.* RADAKISSEN & DOSS v. RAMCHURN MULLICK, 2 C. L. R. 1664, P. C.

Annotations:—Mentd. Goodwyn v. Cheveley (1859), 4 H. & N. 631; *Bank of Van Diemen's Land v. Bank of Victoria* (1871), L. R. 3 P. C. 526.

618. —.]—It is the practice of the Judicial Committee in a case of disputed fact, when the cts. in India appear to have diligently investigated the evidence, & no palpable mistake is apparent in the appreciation by the ct. below of such evidence, to affirm the decree appealed from with costs.—*CHUNDERMONKEE DEBIA CHOWDHORAYN v. MUNMOHEENEE DEBIA* (1861), 8 Moo. Ind. App. 477; 19 E. R. 611, P. C.

619. —.]—It is not the practice of the

Judicial Committee to disturb the finding of the ct. below on mere issues of fact, unless their Lordships are clearly satisfied that there has been a miscarriage of justice either in the reception or in the appreciation of evidence.

In cases which turn upon the credibility of the testimony given, the appellate ct. is disposed to defer to the judgment of the judges who, with the advantage of local experience, have had the means of seeing witnesses under examination & of inspecting the original documents.—*GHOOLAM MOOR-TOOZAH KHAN BAHADOOR v. THE GOVERNMENT* (1863), 9 Moo. Ind. App. 460; 19 E. R. 811, P. C.

620. —.]—A nicka marriage between a Mahomedan & a woman of inferior station, & the legitimacy of the child of such marriage established.

The Sudder Ct. discredited the evidence in favour of such marriage, which the Principal Sudder Ameen believed, & without taking the direct testimony upon that fact into consideration, inferred from the probabilities of the case that no such marriage had taken place:—*Held*: by the Judicial Committee, reversing such decree, that although in a question of disputed fact regarding the credit due to witnesses, irrespective of the probabilities of the case, the appellate court is reluctant to compare the conflicting decisions of the two cts. & decide the case on a conflict of testimony nearly balanced, by a preponderance of probabilities, yet, in the circumstances, though the native testimony was open to suspicion, the duty of a ct. of ultimate appeal was to judge from the evidence & not to infer from probabilities.—*WISE v. SUNDULONISSA CHOWDRANEE* (1867), 11 Moo. Ind. App. 177; 20 E. R. 68, P. C.

621. —When judicial discretion exercised.]—*BUGEJA v. CAMILLERI*, No. 573, *ante*.

622. —.]—When there is no conflict of evidence or question of the credibility of witnesses, & all the evidence is fully before the Committee, & the only question of fact is as to the effect of the facts proved in raising further inferences of fact, the Judicial Committee will not feel their usual reluctance to reverse a decision of fact arrived at by the ct. below.—*THURBURN v. STEWARD* (1871), L. R. 3 P. C. 478; 7 Moo. P. C. C. N. S. 333; 40 L. J. P. C. 5; 19 W. R. 678; 17 E. R. 127, P. C.

Annotation:—Mentd. Re Doetsch, Matheson v. Ludwig, [1896] 2 Ch. 836.

623. Proof of Instrument—Admitted to probate & acted on in lower courts.]—*Semble*: where an instrument has been admitted to probate, & acted upon in the cts. below, this ct. will not enter into the question whether the instrument is sufficiently proved or not.—*KHOORSHED-JEE MANIK-JEE v. MEHRWAN-JEE KHOORSHED-JEE* (1837), 1 Moo. Ind. App. 431; 18 E. R. 173, P. C.

Annotation:—Reid. Moore v. Clucas (1851), 7 Moo. P. C. C. 352.

624. Validity of instrument.]—Considering the advantages which the judges in India generally possess of forming a correct opinion of the probability of a transaction & in some cases of the credit due to the witnesses, the fact that the cts. below have decided against the validity of an instrument affords a strong presumption of the correctness of their decisions, but does not & ought not to relieve the Privy Council, as the ct. of last resort, from the duty of examining the whole evidence, & forming for itself an opinion upon the whole case. With reference to the lamentable disregard of truth prevailing amongst the natives of India, the Privy Council held that it would be very dangerous for the ct. altogether to discredit witnesses deposing *viva voce* by reason of the

necessity imposed on the ct. to sift the evidence of such witnesses with great minuteness & care.—**MUDHOO SOODUN SUNDIAL v. SUROOP CHUNDER SIKKAR CHOWDRY** (1849), 4 Moo. Ind. App. 431; 18 E. R. 764, P. C.

Annotation.—**Consd.** *Tayummaul v. Sashaehalla Naika* (1865), 10 Moo. Ind. App. 429.

625. —.]—(1) In a question involving the genuineness or forgery of an instrument sued upon, which the cts. in India had an opportunity of personally inspecting & held genuine, it is necessary that the evidence impeaching the document be clear & strong to justify the appellate ct. reversing the decree appealed from.

(2) Circumstances in which the Judicial Committee upheld a bond impeached as a forgery & reversed the concurrent decrees of the Zillah & Sudder cts. in India.

(3) Costs in India & upon appeal allowed to applt. upon a reversal of the decree of the ct. below.—**CHBYT RAM v. CHOWDHREE NOWBUT RAM** (1858), 7 Moo. Ind. App. 207; 19 E. R. 287, P. C.

Annotation.—**Generally**, **Mentd.** *Hammack v. White* (1862), 11 C. B. N. S. 588.

626. —.]—In a suit which involved a disputed question of fact as to an alleged adoption & the due execution of a will, the ct. in India, disregarding other evidence, relied solely upon the evidence of a witness examined at the instance of the ct. itself. The ct. below, upon the evidence of this witness, as to his testamentary capacity, corroborated, as it thought, by a letter of the widow of the alleged testator, recognising the adoption, & by her acquiescing in the performance of certain funeral rites of her deceased husband by the supposed adopted son, pronounced both the adoption & the will to be valid :—**Held** : although as a general rule, in a question of fact, the Judicial Committee were unwilling to disturb the judgment of the ct. below, yet as it was the duty of the appellate ct. to weigh the evidence & probabilities, & form an independent judgment, & taking into consideration the evidence regarding the state & capacity of the alleged adopter & testator, they were of opinion, that the evidence relied upon was so unsatisfactory, that neither of the decrees of the cts. below could be supported, & reversed the same with costs.—**TAYAMMAUL v. SASHACHALLA NAIKER** (1865), 10 Moo. Ind. App. 429; 19 E. R. 1034, P. C.

627. Credibility of witnesses. — **MUDHOO SOODUN SUNDIAL v. SUROOP CHUNDER SIKKAR CHOWDRY**, No. 624, *ante*.

628. —.]—**Semble** : the Privy Council will not disturb a judgment of a ct. in India upon a question of the credibility of witnesses, unless it is manifestly clear from the probabilities attached to certain circumstances in the case that the ct. below was wrong in the conclusion drawn from such evidence.—**MUSADEE MAHOMED CAZUM SHERAZEE v. MEERZA ALLY MAHOMED SHOOSTRY** (1854), 8 Moo. P. C. C. 9; 6 Moo. Ind. App. 27; 14 E. R. 35, P. C.

629. —.]—**KRIPOMOYE DEBIA (MUSSUMAT) v. GERISCHUNDER LAHORE** (1861), 8 Moo. Ind. App. 467; 19 E. R. 608, P. C.

630. —.]—It is not the habit of their Lordships, unless in very extraordinary cases, to advise

the reversal of a decision of the Cts. of India merely on the effect of evidence or the credit due to witnesses. The judges there have usually better means of determining questions of this description than we can have, & when they have all concurred in opinion it must be shown very clearly that they were in error in order to induce us to alter their judgment (**LORD KINGSDOWN**).—**NARAGUNTY LUTCHMEEDAVAMAH v. VENGAMA NAIDOO** (1861), 9 Moo. Ind. App. 66; 19 E. R. 666, P. C.

Annotations.—**Fold.** *Mussumat Jariut-ool-Butool v. Mussumat Hoseinee Begum* (1867), 11 Moo. Ind. App. 194; **Allen v. Quebec Warehouse Co.** (1886), 12 App. Cas. 101. **Mentd.** *Kachi Kalyana v. Kachi Yuva* (1905), 21 T. L. R. 721.

631. —.]—**GHOOLAM MOORTOZAH KHAN BAHADOOR v. THE GOVERNMENT**, No. 619, *ante*.

632. —.]—**SCOTT v. PAQUET**, No. 602, *ante*.

633. —.]—Upon a question of fact depending on the effect to be given to parol evidence, & the credit due to witnesses, where the cts. in India have all concurred in one opinion, the Judicial Committee will not disturb the finding unless it is clearly shown that the cts. below were in error. — **JARIUT-OOO-BUTOOL (MUSSUMAT) v. MUSSUMAT HOSEINEE (BEGUM)** (1867), 11 Moo. Ind. App. 194; 20 E. R. 75, P. C.

Annotations.—**Consd.** *Allen v. Quebec Warehouse Co.* (1886), 56 L. J. P. C. 6. **Refd.** *Bhowan Doss v. Mahomed Hossein* (1871), 13 Moo. Ind. App. 346.

634. —.]—The Judicial Committee will not criticise with any strictness opinions as to the credibility of witnesses, which is eminently a question for the courts in India.

Where the cts. below had rejected the evidence of certain witnesses on the ground that it was hearsay only & on the face of the evidence it was sometimes uncertain whether the witnesses were speaking from their own personal knowledge or from information derived from others, but the cts. had considered it from both points of view & held it inadmissible, the Judicial Committee saw no reason to differ from the estimate, which the cts. had formed, as to the credibility of the witnesses.—**SHAFIQ-UN-NISA (MUSAMMAT) v. SHAHAN ALI KHAN (KHAN BAHADUR RAJA)** (1901), L. R. 31 Ind. App. 217, P. C.

635. Trial with jury. — When the question is one of fact only, & has been tried by a jury in the ct. below, this ct. will not reverse a judgment upon such finding unless they are satisfied that the judgment is clearly wrong.—**MOORE v. CLUCAS** (1851), 7 Moo. P. C. C. 352; 13 E. R. 916, P. C.

636. —.]—**RAMCHURN MULLICK v. LUCH-MEECHUND RADAKISSEN**, No. 617, *ante*.

637. —.]—On an issue involving a question of fact, tried by a jury, the Judicial Committee will not reverse the finding of the jury, unless (1) anything material has been admitted as evidence which was not legal evidence, (2) anything material has been tendered as evidence & rejected, which ought to have been received, or (3) there was misconduct on the part of the jury.—**COWIN v. MOORE** (1861), 14 Moo. P. C. C. 354; 15 E. R. 339, P. C.

638. —.]—Where a question is one of fact, & there is evidence on both sides properly submitted to the jury, the verdict of the jury, once found, ought to stand, & the setting aside of such a verdict should be of rare and exceptional occurrence.—**RAILWAYS COMR. v. BROWN** (1887), 13

PART X. SECT. 3. SUB-SECT. 10.— D. (b) i.

627 i. Credibility of witnesses. — On the question whether a mtge. was a fictitious or a real transaction there was evidence on each side bearing directly on the character of the transaction, but on neither side was the

evidence wholly convincing. The cts. in I. differed :—**Held** : in determining which story was to be accepted, it was necessary to rely largely upon surrounding circumstances, the position of the parties & their relation to one another, the motives which could govern their actions; & their subse-

quent conduct. The fact that, if a genuine transaction, it was advantageous to the mtgor., & if fictitious, it afforded him no immediate protection from creditors, was a very material circumstance in the case.—**DALIP SINGH v. NAWAL KUNWAR** (1908), I. L. R. 30 All. 258.—**IND.**

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(b) i. & ii.]

App. Cas. 133; 57 L. J. P. C. 72; 57 L. T. 805, P. C.

Annotation:—*Mentl. Murtagh v. Barry* (1890), 59 L. J. Q. B. 388.

639. —.]—A verdict of a jury will not be disturbed as against evidence or the weight of evidence, unless it is one which a jury, viewing the whole of the evidence reasonably, could not properly find.—*PHILLIPS v. MARTIN* (1890), 15 App. Cas. 193, P. C.

640. — Majority verdict permissible.]—Where the law permits the verdict of the majority of a jury to be accepted, a majority verdict should be regarded by the appellate ct. as equal in weight & value to a verdict that is unanimous.—*WEST INDIA ELECTRIC CO. v. ROBERTS*, [1920] A. C. 1025; 90 L. J. P. C. 47; 124 L. T. 165, P. C.

641. Case supported by false witnesses & forged documents.]—*SURNOMOYEE (RANEE) v. SUTTEESCHUNDER ROY (MAHARAJAH)*, No. 516, *ante*.

642. Inferences of facts contradictory to case made in lower court.]—A decree of the High Ct. of Judicature at Calcutta was founded on an assumed state of facts, contradictory to the case alleged in the plaint & the evidence adduced in support of it; upon appeal to the Judicial Committee:—**Held:** (1) it was incorrect to conclude parties by inferences of fact, not only inconsistent with the allegations in the plaint, constituting the case defts. had to meet, but which were in reality contradictory to the case made by pltf. in the ct. below; (2) the legal conclusions deduced by the High Ct. were from assumed facts, which were not consistent with settled principles of law or equity.—*ESHENCHUNDER SINGH v. SHAMACHURN BHUTTO* (1866), 11 Moo. Ind. App. 7; 20 E. R. 3, P. C.

Annotation:—*As to (1) Refd. Shah Mukhum Lall v. Baboo Bree Kishen Singh* (1868), 12 Moo. Ind. App. 157.

643. Question of boundaries.]—In a question of boundary the Judicial Committee, the ct. of last resort, is extremely reluctant to reverse the judgment of an Indian ct., & will not do so, unless they are, upon the facts & evidence, satisfied that the decision of the ct. below was clearly wrong.—*LEELANUND SINGH (RAJAH) v. MOHENDERNARAIN (RAJAH)* (1869), 13 Moo. Ind. App. 57; 20 E. R. 473, P. C.

644. —.]—In a suit to recover chur lands thrown up by the river B., a compromise took place, & the question resolved itself into one of identification of boundaries. The Sudder Dewanny Ct. remitted the suit to the Principal Sudder Ameen, who deputed an Ameen to make local investigation. He did so, & his report was adopted by the Principal Sudder Ameen, & a decree made in conformity with it. The High Ct. overruled that decree. On appeal to the Judicial Committee:—**Held:** although they were reluctant to interfere with a question of fact of that nature, yet as they had to deal with conflicting judgments, of which

the decree of the Principal Sudder Ameen was founded on a careful local investigation, & the judgment of the High Ct. overruling that decree was not supported on satisfactory grounds, the decree of the ct. of first instance would stand, as it was the duty of the High Ct. not to interfere with the result of a local investigation, except upon clearly defined & sufficient grounds.—*SURUT SOONDREE DEBEA (RANEE) v. PROSONNO COOMAR TAGORE (BABOO)* (1870), 13 Moo. Ind. App. 607; 20 E. R. 677, P. C.

645. —.]—*RAM GOPAL ROY v. GORDON STUART & Co.* (1872), 14 Moo. Ind. App. 453; 20 E. R. 855, P. C.

646. Decision on evidence of doubtful admissibility.]—Where evidence of doubtful admissibility has, under the loose practice of the native cts., been received, the Judicial Committee, as the ct. of last resort, will deal with the case, as it appears to them substantial justice requires, & will not allow any mere technical objection to prevail as to its admissibility.—*BODHNARAIN SINGH (BABOO) v. OMRAO SINGH (BABOO)* (1870), 13 Moo. Ind. App. 519; 20 E. R. 645, P. C.

647. Facts known to appellant at time of trial in lower court—But not brought to notice of court.]—*LYALL v. JARDINE*, No. 354, *ante*.

648. Benamsee transaction.]—Although there may be, with respect to benamsee transactions, circumstances which might create suspicion & doubt as to the truth of the case, yet the appellate ct. will not decide upon mere suspicion, but upon legal grounds established by evidence.—*FAEZ BUKSH CHOWDRY v. FUKEROODKEN MAHOMED AHASSUN CHOWDRY* (1871), 14 Moo. Ind. App. 234; 20 E. R. 775, P. C.

649. Decision on evidence wrongly admitted.]—*LALLA BUNSEEDHUR v. BENGAL GOVERNMENT* (1871), 14 Moo. Ind. App. 86; 20 E. R. 718, P. C.

No application for new trial in lower court.]—*See Nos. 604, 605, ante.*

ii. Where Concurrent Findings.

650. General rule.]—As a rule, the Judicial Committee will not disturb the concurrent judgments of the cts. below on a question of facts, if the facts as found are decisive of the real issue between the parties.—*BURDACANT ROY (RAJAH) v. CHUNDER COOMAR ROY (BABOO)* (1868), 12 Moo. Ind. App. 145; 20 E. R. 295, P. C.

651. —.]—Although, as a general rule, the Judicial Committee will not reverse the concurrent findings of cts. in India on a question of fact, yet there may be circumstances to take such findings out of the scope of the general rule.—*HAY v. GORDON* (1872), L. R. 4 P. C. 337; L. R. Ind. App. Supp. 106; 9 Moo. P. C. C. N. S. 102; 21 W. R. 11; 17 E. R. 452, P. C.

652. —.]—Where no question of law, either as to the construction of documents or any point, arose on the final judgment, & there were concurrent findings of both cts. below on the oral

the evidence, the controversy being merely as to the weight to be attributed to it.—*LALJI SAHU v. TIRHOOT COLLECTOR* (1871), 6 B. L. R. 648; 15 W. R. 23.—**IND.**

650 v. —.]—Where the lower cts. have proceeded upon the evidence & have come to the same conclusion, it is an established rule of practice, that the Judicial Committee of the Privy Council will not on appeal enter into the question whether the decision of the cts. below are or are not correct on matters of fact.—*JAIMUMGAL KOERI v. MOHUN KOERI* (1882), 10 C. L. R. 611.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—
D. (b) ii.]

650 i. General rule.]—Where two cts. below have concurred on a matter of fact, as on a matter of foreign law, the Privy Council would require a very strong case of mischief to reverse them.—*BELLINGHAM v. FREER* (1837), 1 Moo. P. C. C. 342.—**CAN.**

650 ii. —.]—When the provincial cts. have negatived a charge of fraud, it is contrary to the established practice of the Privy Council to reinvestigate the question.—*SEATTLE CONSTRUCTION & DRY DOCK CO. v. GRANT SMITH & Co. & McDONNELL, LTD.*, [1919] 3

W. W. R. 33, 48 D. L. R. 172.—**CAN.**

650 iii. —.]—It is against the practice of the Judicial Committee of the Privy Council to disturb the conclusion reached by all the cts. below on a question affecting the amount of damages.—*DOMINION RADIATOR CO., LTD. v. STEEL CO. OF CANADA, LTD.*, [1919] 3 W. W. R. 41; 48 D. L. R. 350.—**CAN.**

650 iv. — Where question merely as to weight of evidence.]—Where both the lower cts. had agreed as to the facts, the Privy Council refused to examine

& documentary evidence submitted to them:—*Held*: the appeal could not be entertained.—**TOOLSBY PERSAUD BHUCKT v. BENAYEK MISSE** (1896), L. R. 23 Ind. App. 102, P. C.

653. —.]—Provided there has been no contravention of law or procedure, or of any principle of justice, the rule is observed by the Judicial Committee, & commonly recognised by cts. of second appeal, that there will be no interference with concurrent judgment of appellate & original cts. upon matters of fact unless very definite & explicit reasons are assigned for it. Such concurrent judgments are, however, open to argument before the Committee, as in this case.—**MOUNG THA HNYEEN v. MOUNG PAN NYO** (1900), L. R. 27 Ind. App. 166, P. C.

654. Judgment clearly wrong.—The Privy Council, in cases pending upon facts which have received the concurring judgments of two cts. in India, ought not to set aside the last judgment, unless it can see very clearly that that judgment was wrong (*per Cur.*).—**PETAMBER MANIK-JEE v. MOTEE-CHUND MANIK-JEE** (1837), 1 Moo. Ind. App. 420; 18 E. R. 169, P. C.

655. —.]—**NARAGUNTY LUTCHMEEDAVAMAH v. VENGAMA NAIDOO**, No. 630, *ante*.

656. —.]—The rule of the appellate ct. is, that it will not, on a question of fact, reverse an unanimous judgment of the cts. in India, unless the very clearest proof is shown that such decision is erroneous.—**TAREENY CHURN BONNERJEE v. MAITLAND** (1867), 11 Moo. Ind. App. 316; 20 E. R. 121, P. C.

Annotation:—**Folld. Allen v. Queber Warehouse Co.** (1886), 12 App. Cas. 101.

657. —.]—Where the issue is one of facts only, & there have been concurrent judgments by the cts. in India, the Judicial Committee will not disturb such findings, unless they are satisfied that the cts. below were wrong in the conclusions they arrived at from the evidence.—**MEETHUN BEBEE v. BUSHKEER KHAN** (1867), 11 Moo. Ind. App. 213; 20 E. R. 82, P. C.

658. —.]—**JARIUT-OOL-BUTOOL (MUSUMAT) v. MUSUMAT HOSEINEE (BEGUM)**, No. 633, *ante*.

659. —.]—The rule of the Judicial Committee is, never to disturb the concurrent decisions of the cts. below upon a mere question of fact, unless it very clearly appears that there has been some miscarriage of justice, some mistrial, or that the conclusion drawn by the cts. below is plainly erroneous.—**GOSHAIN TOTA RAM v. RICKMUNEE BULLUB (RAJAH)** (1869), 13 Moo. Ind. App. 77; 20 E. R. 481, P. C.

660. —.]—Where there have been concurrent findings of fact by the cts. below, the question in appeal is not what conclusion their Lordships would have arrived at if the matter had for the first time come before them, but whether it has been established that the judgments of the cts. below were clearly wrong.—**ALLEN v. QUEBER WAREHOUSE CO.** (1886), 12 App. Cas. 101; 56 L. J. P. C. 6; 56 L. T. 30, P. C.

Annotation:—**Folld. Whitney v. Joyce** (1906), 75 L. J. P. C. 89.

661. —.]—Where there are concurrent findings of fact in the cts. below, it is incumbent on an applt. to the Judicial Committee to adduce

662 i. Miscarriage of justice.—Where the Ct. of Appeal in India concurs in the finding of the ct. of first instance on a question of fact, the Privy Council will not disturb that finding, unless completely satisfied that there was some miscarriage in respect of the principle on which the decision rested, of a presumption to which too much

weight was given, or of something as to which the Judicial Committee could see there was a principle involved which ought to be set right for the guidance of the ct. in other cases.—**GABINDSUNDARI DEBI v. JAGADAMBA DEBI** (1870), 6 B. L. R. 168; 15 W. R. 5.—**IND.**

662 ii. —.]—Where both cts. in

very clear proof that there is error in the judgment appealed from. It is not sufficient to allege that the judges in the cts. below have approached the question from a wrong point of view, & have failed to give just weight to various minute circumstances.—**WHITNEY v. JOYCE** (1906), 75 L. J. P. C. 89; 95 L. T. 74, P. C.

662. Miscarriage of justice.—**GOSHAIN TOTA RAM v. RICKMUNEE BULLUB (RAJAH)**, No. 659, *ante*.

663. —.]—**ARCHAMBAULT v. ARCHAMBAULT**, No. 545, *ante*.

664. —.]—Where applts. before the Judicial Committee failed to show any miscarriage of justice or the violation of any principle of law or procedure, their Lordships refused to interfere with the concurrent findings of two cts. on pure questions of fact, although they thought the case to be one of great difficulty.—**SIRMATI (RANI) v. KHAJENDRA NARAYAN SINGH** (1904), L. R. 31 Ind. App. 127, P. C.

665. Real question raised by issues not decided—Wrong inferences drawn.—Although the Judicial Committee adhere to the rule not to disturb the findings of two concurrent cts. in India upon a question of fact, yet such rule does not prevail, where the cts. in India have never dealt with the real question raised by the issues, & have drawn wrong inferences from the evidence. In such a case the ct. of ultimate appeal will disregard those concurrent judgments, & decide the case upon the evidence contained in the record.—**MOULVIE SAYYUD UZHUR ALI v. BEBEE ULTAH FATIMA (MUSUMAT)** (1869), 13 Moo. Ind. App. 232; 20 E. R. 538, P. C.

666. Mistrial.—**GOSHAIN TOTA RAM v. RICKMUNEE BULLUB (RAJAH)**, No. 659, *ante*.

667. Question of boundaries.—**RAM CHUNDER DUTT v. CHUNDER COOMAR MUNDUL**, No. 404, *ante*.

—.]—*See, also*, Nos. 643–645, *ante*.

668. Proof of Mocurrery grant of Zemindar.—*Held*: to establish the right to mouzahs as forming part of a Zemindary under a Mocurrery grant, purporting to have been made by the Zemindar, in consideration of past services, the grant must be strictly proved, & the suit would be remitted with directions for a new trial on further evidence.

Costs of the appeal directed to be taxed, & to be costs in the cause to be dealt with by the High Ct.—**PERHLAD SEIN (RAJAH SAHIB) v. DOORGAPERSAUD TEWARREE** (1869), 12 Moo. Ind. App. 286; 20 E. R. 347, P. C.

669. Judgment affirmed by appellate court without reasons given.—Where the High Ct. affirmed the judgment of the ct. below on the facts, without giving reasons for such affirmance, the Judicial Committee reviewed the facts & reversed the decree.—**GUTHRIE v. ABOOL MOZUFFER** (1871), 14 Moo. Ind. App. 53; 20 E. R. 706.

670. Question of fact mixed up with questions of law.—Concurrent judgments of two cts. on a question of fact allowed to be disputed because the question of fact appeared to be a good deal mixed up with law.—**PAULIEM VALLOO CHETTY v. PAULIEM SOORYAH CHETTY** (1877), L. R. 4 Ind. App. 109, P. C.

I. had concurrently decided the matter, those findings ought not to be disturbed unless they were shown to be not justified by the evidence.—**NARASIMHA v. PARTHASARATHY** (1913), L. L. R. 37 Mad. 199.—**IND.**

662 iii. —.]—**SURJA KANTA ACHARYA v. SARAT CHANDRA ROY CHOWDHURY** (1914), 18 C. W. N. 1281.—**IND.**

Sect. 3.—Practice and procedure: Sub-sect. 10, D. (b) ii. & (c); sub-sect. 11.]

671. Evidence consisting of documents—Of which construction not matter for decision.]—Concurrent findings against the *factum* of a dattaka adoption of resp.'s grandfather from the family in which resp. claimed to inherit not allowed to be disturbed merely because the evidence largely consisted of leases & other written documents. Their construction was not in issue, the sole question being as to their effect as evidence of adoption & its consequences.—*LUCHMUN LAL CHOWDHRY v. KANHYA LAL MOWAR* (1894), L. R. 22 Ind. App. 51, P. C.

672. Leave to appeal granted on ground of point of law—No substantial question of law involved.]—Where, on an appeal to the Privy Council, there were two concurrent decisions of the *cts.* below, on facts sufficient to dispose of the suit, but the High Ct. had granted leave to appeal, stating that there seemed to be a point of law which however had not been argued there, & it therefore certified that as regarded the subject-matter & the nature of the questions involved, the case fulfilled the requirements of Civil Procedure Code, s. 596:—*Held*: it appearing there was no substantial question of law involved, there was no sufficient ground for the leave to appeal, which ought not to have been granted.—*KARUPPANAN SERVAI v. SRINIVASAN CHETTI* (1901), L. R. 29 Ind. App. 38, P. C.

673. Evidence not adequately considered.]—*ARCHAMBAULT v. ARCHAMBAULT*, No. 545, *ante*.

674. Courts below coming to same decision but on different grounds—Part of evidence not considered by lower court.]—The usual course of not disturbing concurrent findings of fact may be followed, notwithstanding that a part of the evidence in the suit has not been considered by the lower *cts.*, when both *cts.* have arrived at the same result. In this case, the whole of the evidence having been brought to their notice, the Judicial Committee expressed their opinion that the *ct.* below could not have decided otherwise than as it had decided.—*RAM LAL v. SAIYID MEHDI HUSAIN* (1890), L. R. 17 Ind. App. 70, P. C.

675. —.]—It cannot detract from the weight of concurrent findings of fact that different *cts.*, in arriving at the same result upon the same evidence, have not been influenced by precisely the same considerations, & difference of opinion to that extent is only calculated to suggest that the evidence, whatever view be taken of it, necessarily leads to one & the same inference.—*NILMONI SINGH (RAJAH) v. KIRTI CHUNDER CHOWDHRY* (1893), L. R. 20 Ind. App. 95, P. C.

676. — One court relying on oral evidence — Other court relying on documentary evidence.]—The rule of the Judicial Committee not to disturb a concurrent finding of fact by two *cts.*, unless it is clearly shown to be erroneous, is none the less applicable, although the *cts.* have not taken precisely the same view of the weight to be attached to each particular item of evidence. A case where one *ct.* has relied on the oral, & the other on the documentary evidence is within the rule.—*RAM ANUGHA NARAIN SINGH v. CHOWDHRY HANUMAN SAHAI* (1902), L. R. 30 Ind. App. 41, P. C.

677. —.]—Where both *cts.* below had come to the same conclusion on the two main questions

of fact in the case, which were sufficient to dispose of it, but had not agreed on all the circumstances which led up to such conclusion, & the appellate *ct.* had either differed from the first *ct.* on other questions or had not decided them, the Judicial Committee declined to depart from the general rule as to concurrent findings of fact by the lower *cts.*—*KUNWAR SANWAL SINGH v. SATRUPA KUNWAR (RANI)* (1905), L. R. 33 Ind. App. 53, P. C.

678. Violation of principle of law or procedure.]—*SRIMATI (RANI) v. KHAJENDRA NARAYAN SINGH*, No. 664, *ante*.

679. All evidence taken on depositions.]—Where there have been concurrent findings of fact in the *cts.* below, but all the evidence before these *cts.* was taken on depositions, not orally, the Judicial Committee will allow the facts to be re-opened on appeal.—*VATCHER v. PAULL*, [1915] A. C. 372; 84 L. J. P. C. 86; 112 L. T. 737, P. C.

Annotations:—Mentd. Re Wright, Hegan v. Bloor, [1920] 1 Ch. 108; *Cochrane v. Cochrane*, [1922] 2 Ch. 230.

(c) Other Cases.

680. Want of prosecution — Withdrawal by infant appellant on coming of age—Security for costs given & expenses of appeal paid by guardian.]—An appeal to the Queen in Council was allowed by the High Ct. in a suit instituted by a Hindoo widow as guardian of her husband's adopted son, a minor. After allowance of the appeal & transmission of the record to England, the adopted son, having become of age, petitioned the High Ct. for withdrawal of the appeal. The High Ct. referred the matter to the Judicial Committee. On a petition by *resps.* to dismiss the appeal for want of prosecution, *applt.* resisted the application on grounds, first, that as a Hindoo widow she had preferable title to the adopted son's estate; & secondly with respect to the costs incurred by her as guardian in bringing the suit:—*Held*: dismissing the appeal *simpliciter* (1) as the adopted son was of age & *dominus litis*, & had directed the withdrawal of the appeal, *applt.* had no *locus standi*; (2) any claim she had as widow must be the subject of an independent suit; (3) any costs incurred by her were to be recouped from the adopted son's estate.—*BISTOOPRIA PUTMADAYE (RANEE) v. NUND DHUL* (1870), 13 Moo. Ind. App. 602; 20 E. R. 675, P. C.

— **Delay in prosecuting appeal.]**—*See Nos.* 389, 457–463, *ante*.

SUB-SECT. 11.—JUDGMENT ON APPEAL.

681. Effect of.]—Should the question ever be brought here, it will have to be considered, whether the order in Council, which is not, properly speaking, the decree of a *ct.*, but an order of Her Majesty made on the recommendation of a committee of Her Privy Council, does more than prescribe what shall be the final decree in the cause, leaving it to be executed by the ordinary process of the *cts.* in India. It may well thus finally ascertain & define the rights of the parties without relieving them from the obligation imposed upon them by the general law of enforcing those rights with due diligence; a matter with which the prerogative has no concern (*per cur.*).—*KRISTO KINKUR ROY v. BURRODACAUNT ROY (RAJAH)* (1872), 14 Moo. Ind. App. 465; 20 E. R. 860, P. C.

682. Duty of lower court to obey.]—When a decision of the Judicial Committee has been

PART X. SECT. 3, SUB-SECT. 11.

682. Effect of—Duty of lower court to obey.]—A declaration of H.M. in

Council must not be considered as not being equivalent to an order. When H.M. in Council does make a declaration, the form in which the declaration

is conceived & the words in which that order is framed amount to a direction to the *ct.* below to clothe that direction in the proper form of a mandatory

reported to Her Majesty & has been sanctioned, it becomes the decree or order of the final court of appeal; & it is the duty of every subordinate tribunal to whom the order is addressed to carry it into execution.—*PITTS v. LA FONTAINE* (1880), 6 App. Cas. 482; 50 L. J. P. C. 8; 43 L. T. 519, P. C.

Annotation.—*Mentd. Fraser v. Province of Brescia Steam Tram Co.* (1887), 56 L. T. 771.

— *How enforced.*—*See* Nos. 686, 687, *post*.

683. — Judgment dismissing suit.—On power of lower court to make orders in suit.—A ct. having appointed a receiver in a suit has authority incidental to its jurisdiction, to order him to account, although the suit may be no longer pending. The estate is in its hands, & the receiver is its officer & the dismissal of the suit by an appellate ct. does not alter that state of things. The original ct. in such a case may permit parties interested to intervene on questions as to the accounts, & may deal with costs & other matters.—*ADMINISTRATOR-GENERAL OF BENGAL v. PREM LAL MULLICK* (1895), L. R. 22 Ind. App. 203, P. C.

— *As binding decision on courts.*—*See* ADMIRALTY, Vol. I., p. 102, Nos. 32, 34-36, & generally, JUDGMENTS & ORDERS.

Contents of.—Order for payment of money in hands of Accountant-General of Court of Chancery.—Dismissal of appeal on compromise.—*See* No. 532, *ante*.

— *Allowance of interest.—Judgment reversing decree & ordering payment of money to appellant.*—*See* No. 534, *ante*.

— *Compare* No. 483, *ante*.

— *Directions to lower court to carry out terms of compromise.*—*See* No. 533, *ante*.

— *Directions as to costs in lower court.*—*See* Sub-sect. 13, B., *post*.

684. Construction of.—Judgment for plaintiff in lower court reversed.—Whether payment of interest on amount of judgment implied.—No express direction.—*RODGER v. COMPTON D'ESCOMPTE DE PARIS*, No. 483, *ante*.

685. Rectification of.—Common law power of Judicial Committee to correct mistakes.—(1) By the common law the Judicial Committee possess the same power as the cts. of record & statute have, of rectifying mistakes which have crept in by misprision or otherwise in embodying its judgments.

(2) Where an order had been made *ex p.* upon the appearance of resps. alone for the dismissal of an appeal, & affirmance of the judgment of the

ct. below which purported to be upon the hearing of the cause:—*Held*: such order must be taken simply as a dismissal; & it appearing that appts. were infants under the protection of the Ct. of Wards in India, & that the agent appointed by the ct. to act as their guardian *ad litem* in the matter of the appeal had absconded & abandoned the cause, their Lordships rescinded the order of dismissal, & restored the appeal on the terms of appts. paying the costs & giving access to the transcript of the proceedings in the ct. below, in their hands, & undertaking to lodge the case within five months.—*RAJUNDERNARAIN RAE v. BIJAI GOVIND SING* (1836), 1 Moo. P. C. C. 117; 2 Moo. Ind. App. 181; 12 E. R. 757, P. C.

Annotations.—*As to* (2) *Consd.* Venkata Narasimha Appa Row v. Court of Wards, Venkata Ramalakshmi Garu v. Gopala Appa Row, *Ex p.* Rajah Gopala Appa Row (1886), 11 App. Cas. 660. *Refd.* The Singapore & The Hebe (1866), L. R. 1 P. C. 378; *Ex p.* Kisto Nauth Roy (1869), L. R. 2 P. C. 274. *Generally, Mentd.* Keerut Sing v. Koolahul Sing (1839), 2 Moo. Ind. App. 331; Bhugwauden Doobey v. Myna Baee (1868), 11 Moo. Ind. App. 487.

686. Enforcement of.—By attachment for contempt.—Refusal of judge of lower court to obey.—This ct. will not visit a judge of an inferior ct. with the penal consequences of an attachment for contumacy & contempt, for disregarding an inhibition unless such disobedience is wilful, & proceeds from improper motives.—*BARTON v. FIELD* (1813), 4 Moo. P. C. C. 273; 8 Jur. 113; 13 E. R. 307, P. C.

687. — By peremptory order.—Refusal of lower court to execute.—In suits before the Sudder Dewanny Adawlut at Madras, that ct. decided in favour of A., & pending appeals to England by B., put A. into possession of the disputed estates. The Judicial Committee reversed the decree of the Sudder Dewanny Adawlut, & directed that ct. to put B. into possession of the estates. Pending the appeals the Board of Revenue took possession, sold a portion of the estate for satisfaction of arrears of revenue, & became themselves purchasers. The Sudder Dewanny Ct. declined to interfere or carry into execution the order in Council confirming the report of the Judicial Committee, on the ground, that the estates were then in the possession of the Madras Govt. Upon a petition by B. to the Judicial Committee complaining of such refusal, a peremptory order was issued, commanding the Sudder Dewanny Adawlut forthwith to carry into execution the order in Council made on the appeals, & to direct the collectors of the districts in which the estates were situated to put B. into possession, according to the terms of the order in Council.—*Re VASAREDDY*

order, & to give effect to the mandatory order so expressed. If any deliberate obstruction occur on giving effect to such declaration, the Privy Council will not fail to recommend Her Majesty to deal with such obstructiveness in the most serious & strongest manner.—*RE BARLOW v. ORNE* (1872), 18 W. R. 175.—IND.

688 i. — Judgment dismissing suit.—For want of prosecution.—An order of H.M. in Council dismissing an appeal for want of prosecution, does not deal judicially with the matter of the suit, & can in no sense be regarded as an order adopting or confirming the decision appealed from. It merely recognises authoritatively that the appt. has not complied with the conditions under which the appeal was open to him, & that he is in the same position as if he had not appeared at all.—*ABDUL MAJID v. JAWAHIR LAL* (1914), L. L. R. 36 All. 350.—IND.

o. — As binding decision on courts.—Resp. in an appeal to the

Privy Council died intestate before the hearing, & in ignorance of such death, the Privy Council gave judgment, & ordered appts. to pay costs of the appeal. Afterwards a suggestion of the death was entered in the ct. below:

—*Held*: whilst the judgment of the Privy Council stood, appts.' rights & liabilities were unaffected.—*FLOOD v. EGAN* (1899), 20 N. S. W. L. R. 333; 16 N. S. W. W. N. 64.—AUS.

p. ——The judgment of the Judicial Committee reported to, & confirmed by, H.M. in Council cannot be re-opened only for the reason that new evidence is forthcoming.—*YARLAGADDU DURGA v. MALLIKARJUNA* (1891), L. L. R. 14 Mad. 439.—IND.

q. ——A decision of the Privy Council though not in a case arising from India is binding on the cts. in India.—*KARIDAN KUMBER v. BRITISH INDIA STEAM NAVIGATION CO., LTD.* (1913), L. L. R. 38 Mad. 941.—IND.

684 i. Construction of.—Land was

put up for sale & purchased by appt. in execution of a decree. The sale was confirmed & he put into possession. On appeal against the order confirming the sale, the High Ct. set it aside. The purchaser preferred an appeal to the Privy Council. While the appeal was pending, he was compelled to deliver up possession of the land, but security was furnished under an order by persons not parties to the suit for its re-delivery to him & for the payment of mesne profits in the event of his appeal being successful. On appeal the Privy Council reversed the order of the High Ct. The purchaser was replaced in possession of the land, & he applied for execution in respect of the mesne profits against the resps.:—*Held*: although the appeal to the Privy Council related to the order confirming the sale, & not to that by which possession was awarded, & the order in Council did not direct payment of mesne profits, yet such payment was within its purview as being a benefit by way of restitution fairly & reasonably

Sect. 3.—Practice and procedure: Sub-sects. 11, 12 & 13, A. (a) i.]

LUTHEMPUTTY NAIDOO (RAJAH) (1852), 8 Moo. P. C. C. 115; 5 Moo. Ind. App. 300; 14 R. R. 44, P. C. Annotation.—*Mentd.* Nagaluthee Ummal v. Gopoo Nadaraja Chetty (1856), 6 Moo. Ind. App. 309.

688. — By action—Order for payment of costs.—HUTCHINSON v. GILLESPIE, No. 572, *ante*.

689. — Power of lower court to order payment of interest—Judgment for plaintiff reversed by Judicial Committee.—RODGER v. COMPTOIR D'ESCOMPTE DE PARIS, No. 483, *ante*.

— In ecclesiastical matters.—*See* ECCLESIASTICAL LAW.

SUB-SECT. 12.—REHEARING OF APPEALS.

690. General rule.—There may be exceptional circumstances which will warrant the Judicial Committee, even after an order of Her Majesty in Council has been made, in allowing a rehearing at the instance of one of the parties, but this is an indulgence with a view mainly to doing justice when by some accident, without blame, the party has not been heard & an order has been made inadvertently as if the party had been heard.

In a petition for rehearing of two appeals which had been fully heard upon their merits, & in which judgment had been given & reported to Her Majesty, & confirmed by regular orders in Council:—*Held*: assuming that a relevant case of new matter had been made out the decision was final, & the petition must be refused.—VENKATA NARASIMHA APPA ROW v. COURT OF WARDS, VENKATA RAMAKRISHNA GARU v. GOPALA APPA ROW, *Ex p.* GOPALA APPA ROW (RAJAH) (1886), 11 App. Cas. 660; 2 T. L. R. 828, P. C.

690a. —.—HEBERT v. PURCHAS (1871), L. R. 3 P. C. 664; 7 Moo. P. C. C. N. S. 551; 40 L. J. Eccl. 55; 17 E. R. 208, P. C.

Annotations.—*Consd.* Venkata Narasimha Appa Row v. Court of Wards, Venkata Ramakrishna Garu v. Gopala Appa Row, *Ex p.* Gopala Appa Row (1886), 11 App. Cas. 660. *Refd.* L. C. C. v. Dundas, [1904] P. 1.

691. Before decision embodied in order in council.—On a petition for the remission of a sentence based upon a conviction of perjury in the Cts. of Minorca the Privy Council at the first hearing remitted the whole sentence. Before the order on the first hearing had been confirmed by the King, the Privy Council afterwards reheard the case at the instance of the Governor, when a partial remission was substituted.—*Re* FONARIS (1719), 1 Moo. P. C. C. 127. n; 12 E. R. 762, P. C.

692. Appeal heard *ex parte*—Whether owing to default of applicant for rehearing—Default of guardian *ad litem* of infant applicants.—RAJINDER NARAIN RAE v. BIJAI GOVIND SING, No. 685, *ante*.

693. — Mistake of applicant's agent.—

(1) The Judicial Committee will not rehear an appeal which has been heard *ex p.* through a mistake, except under very special circumstances, & only when the *ex p.* hearing has not been occasioned by any default in the party applying for a rehearing.

On a petition to rehear an appeal which had been heard *ex p.* & the decree of the Ct. below reversed, it appeared that petitioner, one of several resps. in the appeal, had given instructions to his agents in England to enter an appearance for him, & to take all the necessary steps for maintaining

the decree of the Ct. below; that the agents of petitioner had no notice that the appeal had been entered; & that on inquiry at the Council office the agents were informed that no such appeal had been entered; but that the misinformation was owing to an inaccurate description of the appeal given by petitioner to his agents:—*Held*: the appeal could not be reheard.

(2) It is no part of the duty of the registrar of the Judicial Committee to give notice to the parties to an appeal of the arrival of the record of the proceedings in the Ct. below. Parties to an appeal must examine for themselves at the Council office.—*Re* MUSSUMAT SURN MOYEE (RANEE) & SHOSHEE MOKHEE BURMONIA, *Ex p.* KISTO NAUTH ROY (1869), L. R. 2 P. C. 274; 5 Moo. P. C. C. N. S. 373; 6 Moo. P. C. C. N. S. 360; 12 Moo. Ind. App. 254; 20 L. T. 333; 17 W. R. 521; 16 E. R. 556, 762; *sub nom.* SURN MOYEE (RANEE) v. KISTO NAUTH ROY, 38 L. J. P. C. 21, P. C.

694. — Applicant with full knowledge of pendency of appeal.—Resp., who has been properly made a party to a suit in the Cts. below & bound by the proceedings therein, but who has not entered an appearance as resp. to the appeal, or ordered any person to do so for him, applt. having failed to take the usual steps either to compel his appearance or to have the appeal regularly heard *ex p.* against him, is not entitled to have a rehearing of the appeal, unless by some accident, without any default on his part, the appeal has been inadvertently disposed of as if he had been heard.

Where it appeared that a resp. had full knowledge of the pendency of the appeal, & had furnished the funds for defending it in the name of another resp. thereto, a rehearing was refused.—PERTAB NARAIN SINGH (MAHARAJAH) v. SUBHAO KOER (MAHARANEE), *Ex p.* TRILOKINATH (1878), L. R. 5 Ind. App. 171, P. C.

695. — Fraud of applicant's agent.—Resps. to a pending appeal to the Privy Council from Bengal arranged with a person in Calcutta, who falsely represented himself to be agent for a firm of London solrs., that that firm should conduct resps. case, & supplied him with money to remit to the firm for that purpose. The pretended agent gave no instructions & misappropriated the money, in consequence of which the appeal was heard *ex p.* The appeal was allowed, & on May 23, 1916, an order in Council was made to that effect. Resps. in June, 1916, first became aware of what had taken place, & in July petitioned that the judgment & order in Council should be set aside, & the appeal restored. Upon the report & advice of the Judicial Committee, an order in Council was made in accordance with the petition, subject to terms as to costs.—RAM NARAYAN SINGH v. ADHINDRA NATH MUKERJI, [1917] A. C. 100; 86 L. J. P. C. 144, P. C.

696. — Neglect of appellant to serve all respondents.—MACLEARY v. HILL (1868), cited 38 L. J. P. C. 24, P. C.

Annotation.—*Distd.* *Ex p.* Kisto Nauth Roy (1869), L. R. 2 P. C. 274.

697. Judgment formed on documents improperly included in record—Objection not taken at hearing.—A petition for a re-hearing of an appeal, on the ground that the judgment of the Judicial Com-

consequential upon it.—ARUNACHELLAM v. ARUNACHELLAM (1891), 1 L. R. 15 Mad. 203.—IND.

r. Enforcement of—Whether necessary to make judgment rule of lower court.—It is unnecessary to make a judgment of the Privy Council a rule of Ct. below, for the purpose of en-

forcing it.—MACINTOSH v. DUN (1906), 6 S. R. N. S. W. 451; 23 N. S. W. W. N. 152.—AUS.

s. —.—A judgment of the Privy Council reversing the judgment of the Supreme Ct. should be made a rule of the Supreme Ct.—LEWIN v. HOWE (1887), 14 E. C. R. 722.—CAN.

t. —.—A judgment of the Privy Council should be entered as a judgment of the Supreme Ct. of N. B. in a case appealed from that Ct.—ROBERTSON v. FAIRWEATHER (1906), 37 N. B. R. 497; 2 E. L. R. 134.—CAN.

mittee had been formed upon certain documents which were improperly included by the clerk of the appeals in Lower Canada in the transcript of documents, having been excluded from the pleadings by an act of the ct. below, refused, as it appeared that petitioner had not objected to the documents forming part of the transcript, & had sought to take advantage of such documents as evidence at the hearing of the appeal.—*MOTZ v. MOREAU* (1861), 13 Moo. P. C. C. 376; 8 W. R. 395; 9 W. R. 421; 15 E. R. 142, P. C.

698. Death of judge—Between hearing & delivery of judgment.]—*FALKINGHAM v. VICTORIAN RAILWAYS COMR.*, [1900] A. C. 452; 69 L. J. P. C. 89; 82 L. T. 506, P. C.

Innovation :—*Mentd.* National Bank of Australasia v. Falkingham, [1902] A. C. 585.

In admiralty cases.]—See ADMIRALTY, Vol. I., p. 237, No. 1635.

Restoration of appeals—Dismissed for want of prosecution.]—See SUB-SECT. 7, C., *ante*.

SUB-SECT. 13.—COSTS.

A. Of Proceedings before Judicial Committee.

(a) When Costs allowed.

i. Right of Successful Party to receive Costs.

699. Effect of delay—In applying to discharge order granting leave to appeal.]—*MOHUN LALL SOOKUL v. BEBEE DOSS*, No. 410, *ante*.

700. — In prosecuting appeal.]—Where there had been great & unexplained delay, after special leave to appeal had been granted, in bringing the appeal to a hearing, the Judicial Committee, in reversing the decree, refused the successful applt. his costs.—*PATTABHIRAMIER v. VENCATAROW NAICKEN* (1870), 13 Moo. Ind. App. 560; 20 E. R. 660, P. C.

701. — Indian appeal.]—In future, successful applts. in Indian appeals will not be allowed costs where there has been great delay in prosecuting the appeal & no adequate explanation for the delay is given.—*NANDA LAL DHUR BISWAS, ETC. v. JAGAT KISHORE ACHARJYA CHOWDHURI* (1916), 115 L. T. 351; 60 Sol. Jo. 638, P. C.

702. Appellant—General rule.]—Costs were awarded to a successful applt. upon appeal & in all the proceedings in India from the commencement of the suit, the costs incurred in India to be recovered there.—*BAMUNDOSS MOOKERJEE v. OMEISH CHUNDER RAEE* (1856), 6 Moo. Ind. App. 289; 19 E. R. 108, P. C.

703. — Discretionary.]—Ord. in Council of June 13, 1853, r. 1, allowing applt. costs upon a successful appeal, is discretionary in the ct., & only to be allowed in special circumstances. Upon a reversal, the Ord. in Council contained no direction as to costs. Upon petition by applt. for a supplemental order allowing costs, the Judicial Committee refused to interfere.

To entitle applt. to costs, application ought to be made at the hearing.—*LINDO v. BARRETT* (1856), 9 Moo. P. C. C. 456; 14 E. R. 371, P. C.

704. ——*CHEYT RAM v. CHOWDHREE NOWBUT RAM*, No. 625, *ante*.

705. ——In reversing the decree of the Sudder Ct., the order of that ct. that the costs of the application to re-admit the appeal should be paid by applts. was confirmed; but as applts. were successful in obtaining a reversal of the decree of the ct. below, the costs of the appeal in England against such decree were ordered to be paid by resps.—*ANUNDMOYEE DOSSEE v. POORNOO CHUNDER ROY* (1861), 9 Moo. Ind. App. 26; 19 E. R. 651, P. C.

706. ——*]*—Their Lordships are of opinion that the view taken by the High Ct. is erroneous, that their decrees in the several appeals should be discharged, & that those of the District Judge should be restored. Applts. will be entitled to their costs of these appeals, & in the High Ct. (*per CUR.*).—*JAGDEO NARAIN SINGH v. BALDEO SINGH* (1922), L. R. 49 Ind. App. 399, P. C.

707. — Respondent defending judgment.]—Appeal by deft. against whom the suit was decreed in the ct. of first instance, which decree was confirmed on appeal by the Sudder Adawlut. On appeal to the Privy Council :—*Held* : pltf. had not made out his case below, & the ct. would reverse the judgment, but award deft. costs in the first ct. only, & not in either of the appellate cts., on the ground that pltf., as resp., was defending the judgment.—*MADHO ROW CHINTO PUNT GOLAY v. BHOOKUN-DAS BOOLAKI-DAS* (1837), 1 Moo. Ind. App. 351; 18 E. R. 143, P. C.

708. ——*]*—On reversal by the Judicial Committee of the decree of the high ct. such costs, as were allowed by the practice of the cts. in India to a successful pltf. suing *in forma pauperis*, & paid, were ordered to be restored to deft.—*RAJENDRO NATH HOLDAR v. JOGENDRO NATH BANERJEE* (1871), 14 Moo. Ind. App. 67; 20 E. R. 711, P. C.

709. — Result obtainable in lower court.]—Where the same relief might have been obtained on a rehearing of the petition in the ct. below, the Judicial Committee allowed no costs of the appeal before them.—*THOMPSON v. CARTWRIGHT* (1841), 3 Moo. P. C. C. 421; 13 E. R. 170, P. C.

Compare No. 724, *post*.

710. ——The Judicial Committee gave applt. the costs incurred in the ct. below, but not of appeal.—*SMITH v. DEIGHTON* (1852), 8 Moo. P. C. C. 179; 11 E. R. 69, P. C.

711. — Excessive damages claimed.]—*MURDHUN MOHUN DOSS v. GOKUL DOSS*, No. 525, *ante*.

712. — Attempt by provincial Government to upset long-standing settlement.]—Under the provisions of the Decennial Settlement of 1789, the Bengal Government, in 1790, assessed the whole of the Zemindary of Khuruckpore, including certain Ghatwally lands, at a fixed jumma. This Settlement was made perpetual in 1796, under Ben. Reg. I., of 1793, at the same fixed jumma. In 1838, the Government set up a claim to resume, for the purpose of revenue assessment, the Ghatwally lands in this Zemindary. Such claim was dismissed. In circumstances respecting the enforcement by Government of their claim to resume these lands, the Judicial Committee, in reversing the decree of the Special Commissioners, decreed all the costs incurred in the proceedings in India & before Judicial Committee, to be paid by the Bengal Government.—*LELANUND SING BAHADOOR (RAJA) v. BENGAL GOVERNMENT* (1855), 6 Moo. Ind. App. 101; 19 E. R. 38, P. C.

Annotation :—*Mentd.* Sunbhoollall Girdhurlall v. Surat Collector (1859), 8 Moo. Ind. App. 1.

713. — Costs to be costs in cause.]—*PERILAD SEIN (RAJAH SAHIB) v. DOORGAPERSAUD TEWARREE*, No. 608, *ante*.

714. — Miscarriage due to way in which issue framed by judge.]—In a suit brought to recover two mouzahs in the possession of defts. under a Mocurrery tenure, alleged to have been granted by pltf., the deeds creating which he impeached as forgeries, the cts. below, without adverting to that allegation, or examining the merits of the case, confined the issue in the suit solely to one of limitation. The Judicial Committee :—*Held* : (1) the finding of lower ct.

Sect. 3.—Practice and procedure: Sub-sect. 13, A. (a) i., ii. & iii., (b), (c) & (d), B.]

should be reversed, & the suit remanded to the ct. below to be tried on its merits; (2) as the miscarriage of the suit was occasioned by the manner in which the issue was framed by the judge, the costs of appeal were directed to be costs in the cause.—*PERILAD SEIN (RAJAH SAHIB) v. RUN BAHADOOR SINGH* (1869), 12 Moo. Ind. App. 289, 332; 20 E. R. 318, 364, P. C.

715. — *Case remitted to lower court.*—*KALEPERSHAD TEWARREE v. LALLA BINDA LALL*, No. 583, *ante*.

716. — *Leave to appeal only granted to decide abstract question of public interest.*—Special leave to appeal granted on the ground, that the question raised was one of public interest, involving the constitutional rights of a colonial legislative assembly. On reversing the order of the ct. below no costs were given, as the appeal was only allowed to decide the abstract question. *VICTORIA LEGISLATIVE ASSEMBLY SPEAKER v. GLASS* (1871), 1 L. R. 3 P. C. 560; 7 Moo. P. C. C. N. S. 449; 40 L. J. P. C. 17; 24 L. T. 317; 20 W. R. 42; 17 E. R. 170, P. C.

— *Delay in prosecuting appeal.*—*See* Nos. 700, 701, *ante*.

717. — *Time for application for costs.*—*LINDO v. BARRITT*, No. 703, *ante*.

718. Respondent—Appellant indicting witness for perjury—Attempting to use conviction on hearing of appeal.—The Judicial Committee is not bound by the decision of a ct. below upon a question of evidence, although it will in general follow it. The fact of a witness having been convicted of perjury in his evidence in a cause under appeal, cannot be used as a ground for reversing the judgment made in it. Costs were given against an unsuccessful applt., for having attempted to make use of a conviction of this description.—*CANEPA v. LARIOS* (1834), 2 Knapp, 276; 12 E. R. 485, P. C.

719. — *—*—The Ct. of Sudder Dewanny Adawlut having refused to set aside a deed of *razenamah* for compromising an appeal then pending from that ct. to the King in Council, alleged to have been obtained by fraud & duress, on appeal to the Judicial Committee:—*Held*: the onus of proving such fraud & duress lay upon applt. in proceeding upon his petition in the ct. below; & full opportunity for such proof having been afforded him, the judgment of the Sudder Ct. would be confirmed, but, under the circumstances, without costs.—*MOTEE LAL OPUDHIYA v. JUGGURNATH GURG* (1836), 1 Moo. Ind. App. 1; 18 E. R. 1, P. C.

720. — *Circumstances warranting appeal.*—A caveat having been entered, & a suit instituted in the Prerogative Ct., to oppose probate of a will, on the alleged ground of its having been obtained by fraud, & undue influence, when testator was not of sufficient testamentary capacity, judgment was given in favour of the will, & the parties opposing it were condemned in costs. On appeal, to the Judicial Committee:—*Held*: the judgment admitting the probate ought to be affirmed, but, as the circumstances of the case warranted the caveat & proceedings taken, plffs. below ought not to have been condemned in costs, which would be ordered to be paid out of the estate, but no order would be made respecting

the costs of the appeal.—*ARMSTRONG v. HUDDLESTON* (1838), 1 Moo. P. C. C. 478; 12 E. R. 896, P. C.

Annotations:—*Refd.* *Swinfen v. Swinfen* (1859), 1 Sw. & Tr. 283. *Mentd.* *Stultz v. Schoettle* (1852), 20 L. T. O. S. 183.

721. — *Modification of judgment—Account ordered.*—A talook consisting of 210 villages, but classed under the Decennial settlement, for fiscal purposes, as 74 villages, & assessed at 74 separate sudder jummas, was sold by public auction by the collector, in one lot, for arrears of Government revenue, at a sum greatly disproportionate to its value. The sale was made by order of the Board of Revenue, but it did not appear that the collector had informed the Board that the talook consisted of 74 villages, or that the Board had authorised the sale in one specific lot. The Board subsequently confirmed the sale. The surplus of the purchase-money, after satisfying the Government arrears, was received & appropriated by the Malguzar.

The cts. in India having proceeded on the footing that the purchaser had been repaid, during the time he was in possession, by the perception of the rents & profits of the zemindary, did not direct the Malguzar to refund the purchase-money or call for an account of the mesne profits. Such part of the decree of the ct. below was reversed, & an account directed to be taken in India of the rents & profits received by the purchaser, giving credit for permanent improvements on the estate, & as the purchaser was not responsible for the illegality of the sale, so much of the decree of both cts. below, as condemned him in costs was reversed, & both parties ordered to pay their own costs in the cts. in India & in this country.—*MITTERJEET SING (MAHA-RAJAH) v. JUSWUNT SING (RANEE) (HEIRS)* (1842), 3 Moo. Ind. App. 42; 18 E. R. 414, P. C.

722. — *Alteration in rate of interest.*—Where, in lieu of interest at 5 per cent. on a loan made to a guardian of a minor in a transaction which was set aside, the Privy Council made an order for 6 per cent. interest:—*Held*: this was not such a modification of the decree of the ct. below as was sufficient to deprive resp. of the costs of appeal.—*LALLA BUNSEEDHUR v. KOONWUR BINDESEREE DUTT SINGH* (1866), 10 Moo. Ind. App. 454; 19 E. R. 1044, P. C.

Annotation:—*Mentd.* *Baboo Lekraj Roy v. Baboo Mahtab Chund* (1871), 14 Moo. Ind. App. 393.

— *Delay in applying to discharge order granting leave to appeal.*—*See* No. 410, *ante*.

723. — *Appeal dismissed for reasons wholly different from those of lower court.*—Where an appeal was dismissed on wholly different grounds from those which the lower ct. had given for its decision, it was dismissed without costs.—*FISCHER v. KAMALA NAICKER* (1860), 8 Moo. Ind. App. 170; 2 L. T. 94; 8 W. R. 655; 19 E. R. 495, P. C.

Annotations:—*Mentd.* *Ram Coommar Coondoo v. Chunder Canto Mookerjee* (1876), 2 App. Cas. 186; *Re Cambrian Mining Co.* (1882), 48 L. T. 114; *Bradlaugh v. Newdegate* (1883), 11 Q. B. D. 1; *British Cash & Parcel Conveyors v. Lanson Store Service Co.*, [1908] 1 K. B. 1006.

ii. Liability of Successful Party to pay Costs.

724. Appellant—General rule.—Although the general rule in the Privy Council is not to condemn applt. to pay resp.'s costs where the judgment of the ct. below is altered on appeal, yet where applt.

PART X. SECT. 3, SUB-SECT. 13.—A. (a) i.

719 i. Respondent.—Resp. in an appeal to the Privy Council died in

testate before the hearing, & in ignorance of such death, the Privy Council gave judgment, & ordered applts. to pay costs of the appeal. Afterwards a suggestion of the death

was entered in the ct. below:—*Held*: applts. were liable for costs of the appeal.—*FLOOD v. EGAN* (1899), 20 N. S. W. L. R. 333; 16 N. S. W. W. N. 64.—*AUS.*

might have obtained the alteration in the ct. below without appeal, which was made on appeal, & the general principle of the judgment was affirmed, he was ordered to pay resp.'s costs.—**BERTRAM v. GODFRAY** (1830), 1 Knapp, 381; 12 E. R. 364, P. C.

Annotation.—**Mentd.** Murtunjoy Chuckerbutty v. Cockrane (1865), 10 Moo. Ind. App. 229.

725. — Relief obtainable in lower court.—**BERTRAM v. GODFRAY**, No. 724, *ante*.

Compare No. 709, *ante*.

726. — Amount in issue small—Leave to appeal obtained on ground that question was of wide general interest.—Where the amount at stake was small, & applt. obtained special leave to appeal on the ground that the question was of wide general interest, he was ordered, though successful in the appeal, to pay the costs of both sides.—**FORGET v. OSTIGNY**, [1895] A. C. 318; 64 L. J. P. C. 62; 72 L. T. 399; 43 W. R. 590; 11 T. L. R. 323; 11 R. 474, P. C.

Annotations.—**Mentd.** Crawley v. White (1898), 14 T. L. R. 247; Richards v. Starck, [1911] 1 K. B. 296.

727. Respondent—Refusal to consent to reasonable compromise.—Costs given to applts. from the judgments of a colonial ct. of error, confirming, upon a bill of exceptions, the judgments of a ct. of common law, on the ground that the points of law involved in the appeals had previously been determined, in two previous appeals against the same resps. & that they, by not consenting to an amicable compromise, had put applts. to unnecessary expense.—**NEDHAM v. SIMPSON** (1831), 2 Knapp, 1; 12 E. R. 378, P. C.

iii. Other Cases.

728. Party appealing ex parte—Liable to pay costs if unsuccessful.—**MUSSMAUTH ANUNDMOYEE CHOWDHOORAYAN v. SHEEH CHUNDER ROY** (1862), 9 Moo. Ind. App. 287; 19 E. R. 750, P. C.

729. — Of respondent lodging case—But not appearing on hearing.—Where a printed case was lodged on behalf of resps. although they did not appear by counsel at the bar on the hearing, they would, if successful, be allowed their costs down to the lodging of their case, inclusive.—**O'SHANASSY v. JOACHIM** (1876), 1 App. Cas. 82; 45 L. J. P. C. 43; 34 L. T. 265; 24 W. R. 792, P. C.

Annotations.—**Mentd.** Tooth v. Power, [1891] A. C. 284; *Re* Royal Naval School, Seymour v. Royal Naval School, [1910] 1 Ch. 806.

Party appealing in formâ pauperis.—*See* Subsect. 14, *post*.

The Crown—Generally.—*See* CONSTITUTIONAL LAW, Vol. XI., p. 531, Nos. 346, 347.

In prize appeals.—*See* PRIZE LAW & JURISDICTION.

(b) What Costs allowed.

730. Costs of documents improperly admitted.—The Privy Council, whilst lamenting the great latitude with which documentary evidence was received in India:—*Held*: it would be contrary to justice in any particular case to visit upon an individual penal consequences by way of costs, because the administration of justice was not more strictly conducted with reference to the admission of evidence.—**BUNWARRE LAL v. HETNA-**

RAIN SING (MAHARAJAH) (1858), 7 Moo. Ind. App. 148; 19 E. R. 265, P. C.

731. Costs of matters unnecessarily included in record.—**TARAKANT BANNERJEE v. PUDDOMONEY DOSSEE**, No. 427, *ante*.

732. Appellants with common interest appealing separately—One set of costs only allowed.—**MUKHUN LAIL (SHAH) v. SREE KISHEN SINGH (BABOO)**, No. 465, *ante*.

733. Costs nomine expensarum—Objection to competency of appeal taken at hearing—Instead of by application to dismiss.—**AMBER ALI (MOON-SHEE) v. INDERJEET SINGH (MAHARANEE)**, No. 338, *ante*.

(c) How Costs payable.

734. Out of sum deposited as security—Appeal dismissed for want of prosecution—Balance to be returned to appellant.—On special application, permission to appeal was granted in Dec., 1860, on the condition that applt. deposited with the registrar of the Judicial Committee of the Privy Council the sum of £300 for costs. The record was transmitted from India, & resp. brought in his printed case, but applt., though served with a peremptory notice, did not lodge his case or take any other step in the matter. In such circumstances, on application by resp. the appeal was dismissed, & resp.'s costs were directed to be paid out of the sum deposited in the council office, the balance to be returned to applt.—**GOUR MONEE DEBIA v. KIAJAH ABDOL GUNNEE** (1864), 10 Moo. Ind. App. 59; 19 E. R. 891, P. C.

735. — Not where judgment on only part of appeal—Deposit ordered to remain entire to answer costs of rest of appeal.—**BOSTON v. LE-LIVRE**, No. 610, *ante*.

736. — Ratable division—Several sets of respondents appearing separately.—**LYALL v. JARDINE**, No. 354, *ante*.

When security ordered on application for leave to appeal.—*See* 379–392, *ante*.

(d) Enforcement of Order for Costs.

737. By action.—**HUTCHINSON v. GILLESPIE**, No. 572, *ante*.

B. Of Proceedings in lower Courts.

738. Costs of successful party—Appellant—Costs in first court allowed but not in local appellate court—Respondent defending judgment.—**MADHO ROW CHINTO PUNT GOLAY v. BHOOKUN-DAS BOOLAKI-DAS**, No. 707, *ante*.

739. — — — Costs in lower court allowed.—**SMITH v. DEIGHTON**, No. 710, *ante*.

740. — — — Attempt by provincial Government to upset long-standing settlement.—**LELANUND SING BAHADOOR (RAJA) v. BENGAL GOVERNMENT**, No. 712, *ante*.

741. — — — To be recovered in colony.—**BAMUNDOSS MOOKERJEE v. OMBISH CHUNDER RAE**, No. 702, *ante*.

742. — — ——**CHEYT RAM v. CHOWDHREE NOWBUT RAM**, No. 625, *ante*.

743. — — ——**JAGDEO NARAIN SINGH v. BALDEO SINGH**, No. 706, *ante*.

744. — — — Costs left in discretion of lower court.—**GOPEEKRIST GOSAIN v. GUNGAPERSAUD GOSAIN**, No. 577, *ante*.

PART X. SECT. 3, SUB-SECT. 13.—

A. (b).

a. Rule as to mode of taxation—Of costs already awarded—Inapplicable where judgment entered before rule made.—The rule that when the costs incurred in Canada of an appeal to the Privy Council have been awarded, & have not been taxed by the registrar of

the Privy Council, they may be taxed by the senior taxing officer, & the taxation shall be according to the scale of the Privy Council, is not to be construed as applying to a case in which the judgment entitling a party to costs was entered before the rule was made. The *quantum* of costs, as well as the right to them, is ascer-

tained at the time of the judgment, & the *quantum* cannot, without the clearest words, be altered by a subsequent change in the tariff, or by the creation of a tariff which had no existence until after the judgment.—**EARLE v. BURLAND** (1904), 8 O. L. R. 174; 24 C. L. T. 355; 3 O. W. R. 702.—**CAN.**

Sect. 3.—Practice and procedure: Sub-sect. 13, B. & C.; sub-sect. 14. Part XI. Sects. 1 & 2: Sub-sect. 1, A. (a).]

745. ——— **From interlocutory decree—**
Liable for costs of proceedings under decree before
decree appealed from.]—MCKELLAR v. WALLACE,
No. 383, *ante*.

746. ——— **Liable for costs in lower court.]**
—ANUNDMOYEE DOSSEE v. POORNOO CHUNDER
ROY, No. 705, *ante*.

747. ——— **Costs of amending pleadings—**
After new trial ordered—To abide event of new
trial.]—WILLIAMS v. BYRNES, No. 530, *ante*.

748. ——— **Case remitted to lower court.]**
—KALEPPERSHAD TEWARREE v. LALLA BINDA
LALI, No. 583, *ante*.

749. ——— **Suing in lower court in formâ**
pauperis—Allowed such costs as allowed by lower
courts to successful plaintiff suing in formâ
pauperis.]—RAJENDRO NATH HOLIDAR v. JOGENDRO
NATH BANERJEE, No. 708, *ante*.

750. ——— **Respondent—Costs in lower court**
not allowed—Judgment affirmed in lower court
only after additional evidence heard.]—ULRUCK
SING (BABOO) v. BENY PERSAD, No. 615, *ante*.

751. ——— **Ordered out of estate.]—**
ARMSTRONG v. HUDDLESTON, No. 720, *ante*.

752. ——— **Judgment modified.]—**
MITTERJEET SING (MAHA-RAJAH) v. JUSWUNT
SING (RANEE) (HEIRS), No. 721, *ante*.

753. **Costs of motion in lower court for new**
trial.]—The Judicial Committee will not interfere
with the discretion of the judge in the *cts. below*
with respect to the costs of & incident to a motion
for a new trial.—CAMPBELL v. COMMERCIAL BANK-
ING CO. OF SYDNEY, (COMMERCIAL BANKING CO. OF
SYDNEY v. CAMPBELL (1879), 40 L. T. 137, P. C.

*Annotation:—*Mentd. National Bank of Australasia v.
United Hand-in-Hand & Band of Hope Co. (1879), 4
App. Cas. 391.

754. **Apportionment—To amount recovered—**
Not to sum claimed.]—MUDHUN MOHUN DOSS v.
GOKUL DOSS, No. 525, *ante*.

Jurisdiction of Judicial Committee to entertain
appeals as to costs.]—See Sect. 2, sub-sect. 7,
ante.

C. Set-off of Costs.

See case, infra.

SUB-SECT. 14.—APPEALS IN FORMÂ PAUPERIS.

755. **Conditions—Special petition for leave—**
Notwithstanding leave granted by lower court.]—
Pltf. instituted the suit, *in formâ pauperis*, & by
the terms of the deed of compromise, defts. under-
took to pay the costs, upon his entering up the
razi-nama. The *cts. in India* sustained the
compromise, & decreed pltf. should pay, out of
the consideration-money to be received by him,
the costs incurred subsequent to the deeds of
compromise. The decree was affirmed on appeal.

Semble: although the cts. in India admit a

party to appeal to England, in formâ pauperis,
yet applt. ought to make a special application to
the Queen in Council, for leave to prosecute such
*appeal, in formâ pauperis.—*MUNNI RAM AWASTY
v. SHEO CHURN AWASTY (1846), 4 Moo. Ind. App.
114; 18 E. R. 643, P. C.

756. ——— **Certificate of counsel.]—**Before a
party can be admitted to appeal *in formâ pauperis*
to the Judicial Committee of the Privy Council,
from the *cts. in Doctors' Commons*, he must have
a certificate of an advocate of the bar of those
cts. that he has a just & probable cause of appeal.
Upon such certificate, & taking the usual oath as
a pauper, the surrogate may admit an appeal *in*
formâ pauperis.—LAIT v. BAILEY (1851), 7 Moo.
P. C. C. 436; 13 E. R. 948, P. C.

*Annotation:—*Reid. Watts v. Beaman (1854), 9 Moo. P. C. C.
81.

757. ——— **]—**Applt. who had not sued as
a pauper in the *ct. below* was admitted by the
Judicial Committee to appeal *in formâ pauperis*,
upon the usual certificate, without giving security
for the costs already incurred, & in which she had
been condemned by the decree of the *ct. below.*—
WATTS v. BEAMAN (1854), 9 Moo. P. C. C. 81;
14 E. R. 228, P. C.

*Annotation:—*Reid. Kelly v. Corlett (1860), 14 Moo. P. C. C.
89.

758. ——— **]—**(1) An appeal *in formâ*
pauperis from the *Ct. of Ch. in the Isle of Man*
was admitted without security for costs or pay-
ment of fees incident to the appeal.

(2) Before an appeal *in formâ pauperis* can be
allowed, a certificate of counsel that there are
good grounds of appeal must be obtained.—
KELLY v. CORLETT (1860), 14 Moo. P. C. C. 89;
15 E. R. 239, P. C.

759. **Time for petition for leave—Effect of**
delay.]—After a delay of eight years from the date
of the judgments of the *ct. below*, the Judicial
Committee refused to grant leave to appeal *in*
formâ pauperis, no sufficient explanation being
given to account for petitioner's laches.—*Re*
SARCHET (1857), 10 Moo. P. C. C. 533; 14 E. R.
593, P. C.

760. **Grounds for granting or refusing leave—**
Appellant not worth £5 besides wearing apparel.]
—This appeal *in formâ pauperis* was allowed,
applt. by his petition & affidavit alleging that
he was not worth £5 besides wearing apparel, etc.
—BROUARD v. DUMARESQUE (1841), 3 Moo. P. C. C.
457; 13 E. R. 186, P. C.

761. *S. P.* BROUARD v. DUMARESQUE (1848), 6
Moo. P. C. C. 412; 13 E. R. 742, P. C.

762. *S. P.* *Re* LEMPRIERE (1858), 11 Moo. P. C. C.
398; 14 E. R. 746, P. C.

763. ——— **Appellant not heard in lower court—**
Leave to appeal refused by lower court.]—Permis-
sion was given to appeal *in formâ pauperis* in a
case in which applt. was not heard in the *ct.*
below & was refused leave to appeal to Her
Majesty in Council, the decision being in fact
ex p.—GEORGE v. R. (1866), L. R. 1 P. C. 389;
4 Moo. P. C. C. N. S. 287; 16 E. R. 325, P. C.

PART X. SECT. 3, SUB-SECT. 13.—C.

b. Costs of appeal to Judicial
Committee—No right of set-off—Nor to
modify direction to pay—Unless applica-
tion made before final judgment.]—
When costs of appeal to the Judicial
Committee have been awarded by
that tribunal they are not subject to
the rules of practice of the lower *cts.*;
there is no right of set-off, & no right
to modify the direction to pay, which
means forthwith after the amount is
fixed, unless by application made to
the committee before final judgment is
completed.

Pltfs. were ordered by the Judi-
cial Committee to pay the costs
of defts.' appeal to that tribunal:—
Held: they were not entitled to a stay
of execution for such costs in the High
Ct., with a view to a set-off of other
costs or of damages to be recovered
upon a new trial ordered by the Judicial
*Committee.—*METALLIC ROOFING CO.
v. JOSE, C. R., [1909] A. C. 1; 12
O. W. R. 670; 17 O. L. R. 237.—
CAN.

PART X. SECT. 3, SUB-SECT. 14.

c. Leave to appeal—Cannot be

granted under Orders in Council.]—
The *ct. cannot, under the Orders in*
Council, give leave to appeal in formâ
*pauperis.—*Re WILLIAMS, *Ex p.* RAIL-
WAYS COMR. (1899), 20 N. S. W. Eq.
28; 15 N. S. W. W. N. 223.—AUS.

d. — Whether court fees included.]
—Where leave to appeal *in formâ*
pauperis has been granted by the
Privy Council, the King's order will
be taken to include fees in the Supreme
Ct. of Canada.—DOMINION CARTRIDGE
CO. v. MCARTHUR (1901), Cam. Prac.
322.—CAN.

764. — Proposed appeal idle & frivolous.]—QUINLAN *v.* QUINLAN, No. 420, *ante*.

765. — No provision in colonial code—Case fit to be taken in appeal.]—Where a colonial code made no provision for appeals *in formâ pauperis*, & it was contended that the case was as regards amount, value & nature fit to be taken in appeal, special leave was under the circumstances of the case granted.—PONAMMA *v.* ARUMOGAN, *Ex p.* PONAMMA, [1902] A. C. 561; 71 L. J. P. C. 121, P. C.

766. — Court below with power to grant leave—No application made to court below.]—As a general rule leave will not be given to appeal *in formâ pauperis* where the ct. below has power to grant such leave on the usual conditions, unless in the first instance an application for leave has been made within due time to the ct. from which it is proposed to bring the appeal.—*Ex p.* WALKER, [1903] A. C. 170; *sub nom.* WALKER *v.* WALKER, 72 L. J. P. C. 36; 88 L. T. 133; 51 W. R. 658, P. C.

767. — No cause of action disclosed in grounds of appeal.]—Leave to appeal *in formâ pauperis* was refused on the ground that the materials supplied on the application for leave to appeal were ample & complete, & afforded no ground of action to petitioner, who was pltf. in the action.—MITCHELL *v.* NEW ZEALAND LOAN CO., *Ex p.* MITCHELL, [1904] A. C. 149; 73 L. J. P. C. 17; 89 L. T. 83, P. C.

768. On what terms leave granted—Security for costs—Whether ordered.]—WATTS *v.* BEAMAN, No. 757, *ante*.

769. — — — — —.]—KELLY *v.* CORLETT, No. 758, *ante*.

770. — — — — —.]—Effect of failure to obey order for.]—A petition to continue an appeal *in formâ pauperis*, when petitioner had failed to comply

with an order to give security for costs in proceedings to administer an estate, was rightly rejected.—SABRITI THAKURAIN *v.* SAVI (1921), 37 T. L. R. 304, P. C.

771. Costs—Party appealing in formâ pauperis successful—Application of House of Lords rule.]—The rule in pauper cases prevailing in the House of Lords was adopted by the Privy Council, & the successful applt. was awarded such costs of the appeal as would be granted by that rule.—WASTENEYS *v.* WASTENEYS, [1900] A. C. 446; 69 L. J. P. C. 83, P. C.

772. — — — — —.]—Effect of order giving leave to appeal in formâ pauperis.]—Resp. will pay to applt. the costs of this appeal, but from the date on which applt. was permitted to proceed with his appeal *in formâ pauperis* his costs will only be allowed on that footing (*per Cur.*).—POLLARD *v.* HARRAGIN, [1891] A. C. 450; 60 L. J. P. C. 63; 65 L. T. 1, P. C.

773. — — — — —.]—Resp. will pay to applt. his costs of this appeal, but from the date on which applt. was permitted to proceed with his appeal *in formâ pauperis* his costs will only be allowed on that footing (*per Cur.*).—MCLEOD *v.* ST. AUBYN, [1899] A. C. 519; 68 L. J. P. C. 137; 81 L. T. 158; 48 W. R. 173; 15 T. L. R. 487, P. C.

*Annotation:—*Mentd. Scott *v.* Scott, [1913] A. C. 417.

774. — — — — —.]—An order of the Judicial Committee giving special leave to appeal *in formâ pauperis* takes effect from the date upon which it is made, & has no effect upon costs incurred before that date. A successful applt. *in formâ pauperis* is consequently entitled to recover the costs of the petition for special leave to appeal upon the ordinary scale as between party & party.—LEVINE *v.* SEILING, [1914] A. C. 665; 83 L. J. P. C. 295; 111 L. T. 355, P. C.

Part XI.—The Supreme Court of Judicature.

SECT. 1.—CONSTITUTION AND NATURE.

See Judicature Acts, 1873 (c. 66) to 1902 (c. 31); Bankruptcy Act, 1883 (c. 52), ss. 3, 93.

775. Supreme Court—Mere name—No practical existence.]—The Supreme Ct. does not really exist, that is, does not practically exist, as it is never to sit, & is not intended to sit, but is merely a name (*per Cur.*).—*Re* SUPREME COURT SOLICITOR (1875), 1 Char. Pr. Cas. 60.

776. King's Bench Division—Supersedes ancient superior courts of common law.]—The present K. B. Div. of the High Ct. stands in the place of the three ancient superior cts. of common law, & besides representing the powers & exercising the authority of the Cts. of Common Pleas & Exch., inherits all the jurisdiction & powers of the Ct. of K. B. From the most ancient times that ct. exercised functions which belonged to no other ct. in the Kingdom (WILLS, J.).—*R. v.* DAVIES, [1906] 1 K. B. 32; 75 L. J. K. B. 104; 54 W. R. 107; 50 Sol. Jo. 77; *sub nom.* *R. v.* DAVIES, *Ex p.* HUNTER, 93 L. T. 772; 22 T. L. R. 97, D. C.

*Annotations:—*Refd. Lauth Northern Division Case (1910), 6 O.M. & H. 103; *R. v.* Clarke, *Ex p.* Crippen (1910), 103 L. T. 636; *R. v.* Daily Mail, *Ex p.* Farnsworth, [1921] 2 K. B. 733.

Jurisdiction of.]—*See* Sect. 2, sub-sect. 2, *post*.

SECT. 2.—THE HIGH COURT OF JUSTICE.

SUB-SECT. 1.—JURISDICTION GENERALLY.

A. Original Jurisdiction.

(a) In General.

777. To enforce statutory rights—Recovery of penalty—Unless precluded by express words—Or necessary implication.]—CATES *v.* KNIGHT, No. 137, *ante*.

778. — — — — —.]—Courts of law & equity can only enforce the rights of parties under Acts of Parliament by the application of their known rules & principles; if they are inadequate for the purpose the legislature alone can supply the defect.—WEALE *v.* WEST MIDDLESEX WATERWORKS CO. (1820), 1 Jac. & W. 358; 37 E. R. 412.

*Annotations:—*Mentd. Simpson *v.* Scottish Union Insee, (1863), 1 Hem. & M. 618; Ellis *v.* Bedford, [1899] 1 Ch. 494.

Jurisdiction of cts. of equity generally, see EQUITY.

779. To set aside award—Error appearing on face of award.]—The inherent jurisdiction of the High Ct. to set aside an award under the Agricultural Holdings Act, 1908 (c. 28), on the ground of error appearing on the face of it where there has been no misconduct on the part of the arbitrator

PART XI. SECT. 1.

*e. Mere name.]—*The Supreme Ct. of Judicature is not properly a ct., & ought more properly to have been

called the Supreme Council of Judicature. The divisions of the High Ct. are not themselves cts., but together constitute the High Ct., which is thus divided for the convenience of trans-

acting business; & the judges sit as judges of the High Ct., & exercise the jurisdiction & administer the jurisdiction of the High Ct.—*R. v.* BUNTING (1884), 7 O. R. 118.—CAN.

Sect. 2.—The High Court of Justice: Sub-sect. 1, A. (a) & (b) i.]

is not taken away by that Act. That jurisdiction was not excluded by the Arbitration Act, 1889 (c. 49), & when the jurisdiction under that Act with reference to arbitration proceedings under the Agricultural Holdings Act, 1908, was transferred to the county ct. by that Act, the inherent jurisdiction of the High Ct. in those matters was neither expressly nor by implication transferred to it.—*Re JONES & CARTER'S ARBITRATION*, [1922] 2 Ch. 599; 91 L. J. Ch. 824; 127 L. T. 622; 38 T. L. R. 779; 66 Sol. Jo. 611, C. A.

See ARBITRATION, Vol. II., pp. 545 *et seq.*

To grant injunction.—*See* INJUNCTION.

To issue writ of habeas corpus.—To any part of dominions of Crown.—*See* CROWN PRACTICE, pp. 249, 250, *post*.

(b) Effect of Judicature Acts.

i. In General.

780. Administration of law & equity in one tribunal.—Rules of equity prevail.—Since the passing of 1873 Act the cts. of common law have concurrent jurisdiction with the cts. of equity with regard to the care & custody of infants, but, in the exercise of that jurisdiction, the rules of equity are to prevail.—*Re GOLDSWORTHY* (1876), 2 Q. B. D. 75; 46 L. J. Q. B. 187.

781. ———.—It is stated very plainly that the main object of 1873 Act was to assimilate the transaction of equity business & common law business by different cts. of judicature. It has been sometimes inaccurately called "the fusion of law & equity"; but it was not any fusion, or anything of the kind; it was the vesting in one tribunal the administration of law & equity in every cause, action or dispute which should come before that tribunal. That was the meaning of the Act. Then, as to that very small number of cases in which there is an actual conflict, it was decided that, in all cases where the rules of equity & law were in conflict, the rules of equity should prevail. That was to be the mode of administering the combined jurisdiction, & that was the meaning of the Act. To carry that out, the Legislature did not create a new jurisdiction, but simply transferred the old jurisdictions of the cts. of law & equity to the new tribunal, & then gave directions to the new tribunal as to the mode in which it should administer the combined jurisdictions (JESSEL, M.R.).—*SALT v. COOPER* (1880), 16 Ch. D. 544; 50 L. J. Ch. 529; *affd.* on other grounds (1880), 16 Ch. D. 556, C. A.

Annotations:—Mentd. Leggett v. Western (1884), 12 Q. B. D. 287; *Walmsley v. Mundy*, *Ex p.* Goodenough (1884), 50 L. T. 317; *Re Whiteley*, *Whiteley v. Learoyd* (1887), 56 L. T. 846; *Brereton v. Edwards* (1888), 21 Q. B. D. 226; *Wills v. Luff* (1888), 38 Ch. D. 197; *Holmes v. Millage*, [1893] 1 Q. B. 551; *Harris v. Beauchamp*, [1894] 1 Q. B. 801; *Ponnammam v. Arumogam*, [1905] A. C. 383; *Re Hearn*, *De Bertodano v. Hearn* (1913), 108 L. T. 452.

782. ———.—The ct. is now not a ct. of law or a ct. of equity; it is a ct. of complete jurisdiction, & if there were a variance between what, before 1873 Act, a ct. of law & a ct. of equity would have done, the rule of the ct. of equity must now prevail (LORD CAIRNS).—*PUGH v. HEATH* (1882), 7 App. Cas. 235; 51 L. J. Q. B. 367; 46 L. T. 321; 30 W. R. 553, H. L.

Annotations:—Mentd. Harlock v. Ashberry (1882), 19 Ch. D.

PART XI. SECT. 2, SUB-SECT. 1.—A. (b) i.

780 i. Administration of law & equity in one tribunal.—Rules of equity prevail.—In an action in the K. B. Div. the

presiding judge has, under Jud. Act, 1909, s. 18, all the power & may exercise all the jurisdiction & apply all the procedure of the Ch. Div. necessary to afford every kind of equitable relief claimed or appearing incidentally in

539; *Wood v. Wheeler* (1882), 22 Ch. D. 281; *Fowke v. Draycott* (1885), 29 Ch. D. 996; *Badeley v. Consolidated Bank* (1886), 34 Ch. D. 536; *Re Lake's Trusts* (1890), 63 L. T. 416; *Re Owen*, [1894] 3 Ch. 220; *Huntington v. I. R. Comrs.*, [1896] 1 Q. B. 422; *Thornton v. France*, [1897] 2 Q. B. 143; *London & Midland Bank v. Mitchell*, [1899] 2 Ch. 161; *United Realization Co. v. I. R. Comrs.*, [1899] 1 Q. B. 361; *Matthews v. Usher* (1899), 68 L. J. Q. B. 988; *Re Lloyd, Lloyd v. Lloyd*, [1903] 1 Ch. 385; *Re Lovell & Collard's Contract*, [1907] 1 Ch. 249; *Copestake v. Hoper*, [1908] 2 Ch. 10; *Turner v. Walsh*, [1909] 2 K. B. 484; *Williams v. Thomas* (1909), 100 L. T. 630.

783. ———.—The effect of 1875 Act, Ord. 55, was to repeal the previous statutes as to costs, with the exception of such of the provisions of County Cts. Act, 1867 (c. 142), as were expressly preserved by 1873 Act, s. 67.

The manifest object of the Act was to assimilate the practice of law & equity, & to make one rule for all divs. of the one ct. (LORD COLERIDGE, C.J.).—*PARSONS v. TINLING* (1877), 2 C. P. D. 119; 46 L. J. Q. B. 230; 35 L. T. 851; 41 J. P. 311; 25 W. R. 255.

Annotations:—Mentd. *Green v. Wright* (1877), 2 C. P. D. 354; *Devonshire v. Hematite Steel Co.* (1877), 36 L. T. 355; *Bowey v. Bell*, *Brooks v. Israel*, *North v. Bilton*, *Siddons v. Lawrence* (1878), 4 Q. B. D. 95; *Garnett v. Bradley* (1878), 3 App. Cas. 944; *Myers v. Defries* (1880), 49 L. J. Q. B. 266; *Clark v. Wallond* (1883), 52 L. J. Q. B. 321; *Re Wood's Estate*, *Ex p.* Her Majesty's Works & Buildings Comrs. (1886), 31 Ch. D. 607.

784. ———.—(1) Limitation Act, 1623 (c. 16), is, so far as the action for slander is concerned, repealed by the effect of Ord. 55 made under the authority of 1875 Act.

Pltf. in an action for slander obtained a verdict, but recovered only one farthing damages, & the judge declined to make any order or grant any certificate, & the master taxed the costs for pltf. in the ordinary way:—*Held*: the master was right as the costs in such circumstances follow the event.

(2) Any Act which gives the judges power to exercise their judicial discretion in every case as to costs, of necessity repealed previous Acts, which directed costs to follow certain rules, & gave the judges no discretion whatever in the matter (LORD BLACKBURN).

(3) The purpose of 1873 Act was to establish one great tribunal, with consistent & homogeneous action in all its parts, & as far as possible, an assimilation of practice & procedure (LORD O'HAGAN).—*GARNETT v. BRADLEY* (1878), 3 App. Cas. 944; 48 L. J. Q. B. 186; 39 L. T. 261; 43 J. P. 20; 26 W. R. 698, H. L.

Annotations:—As to (1) *Refd.* *Bowey v. Bell*, *Brooks v. Israel*, *North v. Bilton*, *Siddons v. Lawrence* (1878), 4 Q. B. D. 95; *King v. Hawksworth* (1879), 48 L. J. Q. B. 484; *Marsden v. L. & Y. Ry.* (1880), 42 L. T. 630; *Goldhill v. Clarke* (1892), 68 L. T. 414. *As to* (2) *Consd.* *Rockett v. Clippindale* [1891] 2 Q. B. 293. *Refd.* *Ex p.* *Mercers' Co.* (1879), 10 Ch. D. 481; *Myers v. Defries* (1880), 5 Ex. D. 180; *The Dragoman* (1895), 11 T. L. R. 428; *Reid, Hewitt v. Joseph*, [1918] A. C. 717. *Generally*, *Mentd.* *Clarke v. Roche* (1877), 36 L. T. 727; *James v. Monmouth Corp.* (1878), 42 J. P. 535; *The Ganges* (1880), 5 P. D. 247; *Tenant v. Ellis* (1880), 6 Q. B. D. 46; *Barton v. Titmarsh* (1880), 49 L. J. Q. B. 573; *Pollas v. Neptune Marine Insc.* (1880), 28 W. R. 405; *Re Morris*, *Ex p.* *Streeter* (1881), 19 Ch. D. 216; *Turner v. Bridgott* (1882), 51 L. J. Q. B. 377; *Bradlaugh v. Clarke* (1883), 8 App. Cas. 354; *Re Knight's Will* (1884), 26 Ch. D. 82; *Hasker v. Wood* (1885), 54 L. J. Q. B. 419; *Snodling v. Pulling* (1885), 52 L. T. 335; *Parnell v. Mort*, *Liddell* (1885), 33 W. R. 481; *Re Mill's Estate*, *Ex p.* Works & Public Buildings Comrs. (1886), 34 Ch. D. 24; *Stokes v. Stokes* (1887), 19 Q. B. D. 419; *Re Williams*, *Jones v. Williams* (1887), 36 Ch. D. 573; *Re Jones* (1889), 59 L. J. Ch. 157; *Re Fisher* (1894), 63 L. J. Ch. 235; *R. v. London J.J.*, [1895] 1 Q. B. 616; *Sion College v. London Corp.*, [1900] 2 Q. B. 581; *R. v. Speyer*, [1916] 2 K. B. 858; *Banbury v. Bank of Montreal*, [1918] A. C. 626.

the course of the proceeding, but if a deft. raises an equitable defence he is bound by the equitable principles applicable to the circumstances of the case in their entirety.—*DUFFY v. DUFFY* (1915), 43 N. B. R. 555.—OAN.

785. —.]—**FOWLER v. BARSTOW** (1881), 20 Ch. D. 240; 51 L. J. Ch. 103; 45 L. T. 603; 30 W. R. 112, C. A.

Annotations:—Mentd. *Thomas v. Hamilton* (1886), 17 Q. B. D. 592; *Dickson v. Law & Davidson*, [1895] 2 Ch. 62.

786. — **Avoidance of multiplicity of proceedings.**—The fundamental idea of the framers of those statutes is to be found in 1873 Act, s. 24 (7), which enacts that the High Ct. of Justice & the Ct. of Appeal shall grant all such remedies as any of the parties may appear to be entitled to in respect of any legal or equitable claim; so that, so far as possible, all matters so in controversy between the parties respectively may be completely & finally determined, & all multiplicity of legal proceedings concerning any such matters avoided (**BRETT, M.R.**).—**McGOWAN v. MIDDLETON** (1883), 11 Q. B. D. 464; 52 L. J. Q. B. 355; 31 W. R. 835, C. A.

Annotations:—Mentd. *Re Brown, Ward v. Morse* (1883), 52 L. J. Ch. 524; *Caroli v. Hirst* (1883), 48 L. T. 759; *Fraser v. Cooper, Hall* (1883), 31 W. R. 714; *Sykes v. Sacerdoti* (1885), 53 L. T. 150; *Lewin v. Trimming* (1888), 21 Q. B. D. 230; *Amon v. Bobbett* (1889), 22 Q. B. D. 543; *Delobel Filipo v. Varty* (1893), 62 L. J. Q. B. 398; *Alcoy & Gandia Ry. & Harbour Co. v. Greenhill, Greenhill v. Alcoy, etc. Co., Trustees, Exors. & Securities Insee. Corp'n. v. Alcoy, etc. Co.* (1895), 73 L. T. 452; *Kent County Council v. Folkestone Corp'n.* (1905), 74 L. J. K. B. 352.

787. —.]—I am of opinion that 1873 Act, s. 24, & the different sub-sects. thereto, were enacted for the purpose of enabling the High Ct. of Justice to give all the remedies or relief claimed in any action which, before the passing of the Act, could have been given by a ct. of law, & by a ct. of equity coming to the assistance of a ct. of law (**CAVE, J.**).—**LEGGOTT v. WESTERN** (1884), 12 Q. B. D. 287; 53 L. J. Q. B. 316; 32 W. R. 460.

Annotations:—Mentd. *Re Sedgwick, Ex p. McMurdo* (1888), 60 L. T. 9; *Kohlmann v. Maurice*, [1903] 1 K. B. 534; *Hosack v. Robin*, [1917] 1 Ch. 142.

788. —.]—This sect. [1873 Act, s. 25 (6)] relates to procedure only. It is designed to avoid the necessity of going first to a ct. of equity, & then to a ct. of law (**COZENS-HARDY, L.J.**).—**TOLHURST v. ASSOCIATED PORTLAND CEMENT MANUFACTURERS** (1900), LTD., **ASSOCIATED PORTLAND CEMENT MANUFACTURERS** (1900) LTD. *v. TOLHURST*, [1902] 2 K. B. 660; 71 L. J. K. B. 949; 87 L. T. 465; 51 W. R. 81; *affd.* [1903] A. C. 414, H. L.

Annotations:—Refd. *Fitzroy v. Cave* (1905), 93 L. T. 499. **Mentd.** *Dawson v. Great Northern & City Ry.*, [1905] 1 K. B. 260; *Kemp v. Baerselman*, [1906] 2 K. B. 604; *Hubbard v. Weldon* (1909), 25 T. L. R. 356; *Bennett v. White*, [1910] 2 K. B. 643; *Cooper v. Micklefield Coal & Lime Co.* (1912), 107 L. T. 457; *Fratelli Sorrentino v. Buegger*, [1915] 1 K. B. 307; *County Hotel & Wine Co. v. L. & N. W. Ry.*, [1918] 2 K. B. 251; *Whiteley v. Hilt*, [1918] 2 K. B. 808; *Ellis v. Torrington*, [1920] 1 K. B. 399.

789. —.]—1873 Act provided for the amalgamation of the then existing superior cts. of law & equity, with a view to the administration in the new ct. of one system of law in place of the two systems previously known as law & equity, & the general scope of the Act was to enable a suitor to obtain by one proceeding in one ct. the same ultimate result as he would previously have obtained, either by having selected the right ct., as to which there frequently was a difficulty, or after having been to two cts. in succession, which in some cases he had to do under the old system. 1873 Act, s. 25, provided what was to be the rule in future in cases where previously the two systems

differeed (**CHANNELL, J.**).—**TORKINGTON v. MAGEE**, [1902] 2 K. B. 427; 71 L. J. K. B. 712; 87 L. T. 304; 18 T. L. R. 703; *affd.* [1903] 1 K. B. 644, C. A.

Annotations:—Mentd. *Tolhurst v. Associated Portland Cement Manufacturers* (1900), *Associated Portland Cement Manufacturers* (1900) *v. Tolhurst*, [1902] 2 K. B. 660; *Glegg v. Bromley*, [1912] 3 K. B. 474; *County Hotel & Wine Co. v. L. & N. W. Ry.*, [1918] 2 K. B. 251; *Re Pain, Gustavson v. Haviland*, [1919] 1 Ch. 38; *Ellis v. Torrington*, [1920] 1 K. B. 399.

790. Confers no new jurisdiction.—A ship sailing under a foreign flag, & belonging to a foreign co. established abroad, came into collision with, & did damage to, an English ship on the high seas. The owners of the English ship applied for leave to issue a writ of summons, of which notice should be given out of the jurisdiction, claiming compensation for the damage, against the foreign co.:—**Held**: leave would be refused.

In this case the ct. would, under the old law, have possessed no jurisdiction *in personam* over the owners of the *res* unless they could have been served with a citation within the territorial jurisdiction. I do not think that the Legislature, in enacting Ord. 11, r. 1, in 1875 Act, Sched. I., contemplated any alteration of the law in cases similar to the present &, in the circumstances, I am not satisfied that I can grant the leave asked for (**SIR ROBERT PHILLIMORE**).—**Re SMITH** (1876), 1 P. D. 300; 35 L. T. 380; 24 W. R. 903; 3 Asp. M. L. C. 259; 2 Char. Fr. Cas. 224; *sub nom. Re THE CITY OF MECCA, Re SMITH*, 45 L. J. P. 92.

Annotations:—Consd. *The Vivar* (1876), 2 P. D. 29. **Refd.** *The Duc D'Aumale* (1902), 87 L. T. 674.

791. —.]—**HARRIS v. FRANCONIA (OWNERS)**, No. 37, *ante*.

792. —.]—I think that the true construction of Jud. Acts is that they confer no new rights; they only confirm the rights which previously were to be found existing in the cts. either of law or of equity; if they did more, they would alter the rights of parties, whereas in truth they only change the procedure (**BRETT, L.J.**).

The provisions of 1873 Act, s. 24 (4), (7) enable the Cts. of Common Law to deal with equitable rights & to give relief upon equitable grounds, but they do not confer new rights; the different divisions of the High Ct. may dispose of matters within the jurisdiction of the Ch. & the Common Law Cts., but they cannot proceed upon novel principles (**COTTON, L.J.**).—**BRITAIN v. ROSSITER** (1879), 11 Q. B. D. 123; 48 L. J. Q. B. 362; 40 L. T. 240; 43 J. P. 332; 27 W. R. 482, C. A.

Annotations:—Refd. *British South Africa Co. v. Companhia de Mocambique*, [1893] A. C. 602; *Richardson v. Methley School Board*, [1893] 3 Ch. 510. **Mentd.** *Maddison v. Alderson* (1883), 8 App. Cas. 467; *Re Whitehead, Ex p. Whitehead* (1885), 14 Q. B. D. 419; *McManus v. Cooke* (1887), 35 Ch. D. 681; *Re Roberts, Evans v. Thomas* (1887), 57 L. T. 79; *Isaacs v. Evans* (1899), 16 T. L. R. 113; *Dollar v. Parkington* (1901), 84 L. T. 470; *Smith v. Gold Coast & Ashanti Explorers*, [1903] 1 K. B. 285; *Turner v. Melladew* (1903), 19 T. L. R. 273; *Filiott v. Roberts* (1912), 107 L. T. 18; *Morris v. Baron*, [1918] A. C. 1; *Cayme v. Allan, Jones* (1919), 35 T. L. R. 453.

793. Deals with procedure only.—A ct. combining law & equity under 1873 Act is authorised to adopt the procedure of a ct. of equity, & a ct. of equity is compelled to avail itself of the powers given to it as a ct. of law (**LORD HATHERLEY**).

The 1873 Act abolished all the old forms of

786 i. Avoidance of multiplicity of proceedings.—The general scope of Jud. Act requires that matters in controversy between the parties may be completely & finally determined, & multiplicity of legal proceedings concerning such matters avoided; so that,

whenever a subject of controversy arises in an action, the ct. should, if possible, determine it so as to prevent further & useless litigation.—**McDOUGALL v. HALL** (1886), 13 O. R. 166.—**CAN.**

790 i. Confers no new jurisdiction.—**FOXWELL v. KENNEDY** (1911), 24 O. L. R. 189; 18 O. W. R. 782; 2 O. W. N. 821.—**CAN.**

790 ii. —.]—**MITCHELL v. CAMERON** (1883), 8 S. C. R. 126.—**CAN.**

Sect. 2.—The High Court of Justice: Sub-sect. 1, A.
(b) i., ii. & iii., B. (a).]

action; it abolished all the old technical forms of procedure, & established a new procedure for the enforcement indiscriminately of both legal & equitable rights, which is independent of all the old rules of law on that subject (LORD PENZANCE).

The Jud. Acts only enable the ct. to administer the equities already existing without the delay & expense formerly required (LORD BLACKBURN).—**KENDALL v. HAMILTON** (1879), 4 App. Cas. 504; 48 L. J. Q. B. 705; 41 L. T. 418; 28 W. R. 97, H. L.

Annotations:—*Consd.* **Leduc v. Ward** (1886), 54 L. T. 214; **Pilley v. Robinson** (1887), 20 Q. B. D. 155; **Norbury Natzo v. Griffiths**, [1918] 2 K. B. 369. *Reid.* **British South Africa Co. v. Companhia de Mocambique**, [1893] A. C. 602; **Wilson v. Balcarres Brook S.S. Co.**, [1893] 1 Q. B. 422; **Rodriguez v. Speyer**, [1919] A. C. 59. *Mentd.* **Re McRae, Forster v. Davis, Norden v. McRae** (1883), 25 Ch. D. 16; **Re Davison, Ex p. Chandler** (1884), 13 Q. B. D. 50; **Re Hodgson, Beckett v. Ramsdale** (1885), 31 Ch. D. 177; **Munster v. Cox** (1886), 10 App. Cas. 680; **Badeley v. Consolidated Bank** (1886), 34 Ch. D. 536; **Cambeport v. Chapman** (1887), 19 Q. B. D. 229; **Odel v. Cormack** (1887), 19 Q. B. D. 225; **Beck v. Pierce** (1889), 23 Q. B. D. 316; **Blyth v. Fladgate, Morgan v. Blyth, Smith v. Blyth**, [1891] 1 Ch. 337; **Hammond v. Schofield**, [1891] 1 Q. B. 453; **Hoare v. Niblett**, [1891] 1 Q. B. 781; **Westmorland Green & Blue Slate Co. v. Feilden**, [1891] 3 Ch. 15; **Re Crook, Ex p. Collins** (1891), 66 L. T. 29; **Re Outram, Ex p. Ashworth & Outram** (1893), 63 L. J. Q. B. 308; **Weall v. James** (1893), 68 L. T. 515; **Re Errington, Ex p. Mason**, [1894] 1 Q. B. 11; **Wigram v. Cox, Buckley**, [1894] 1 Q. B. 792; **Robinson v. Gelsol** (1894), 64 L. J. Q. B. 52; **Hall v. Sim** (1894), 10 T. L. R. 463; **Wegg Prosser v. Evans**, [1895] 1 Q. B. 108; **McLeod v. Power**, [1898] 2 Ch. 295; **Re Ritson, Ritson v. Ritson** (1898), 67 L. J. Ch. 365; **Eccle. Comrs. v. Pinney**, [1899] 2 Ch. 729; **McCheane v. Gyles** (No. 2), [1902] 1 Ch. 911; **Morel v. Westmorland** (1902), 87 L. T. 635; **Codling v. Mowlem**, [1914] 2 K. B. 61; **Isaacs v. Salbstein**, [1916] 2 K. B. 139; **Goldrei, Foucard v. Sinclair & Russian Chamber of Commerce in London**, [1918] 1 K. B. 180; **Moore v. Flanagan**, [1920] 1 K. B. 919; **Parr v. Snell** (1922), 91 L. J. K. B. 865.

794. ———.]—Semble: (BRETTE, L.J.) 1873 Act has dealt only with procedure, & not with jurisdiction at all, & if no ct. had power to issue an injunction before that Act, the High Ct. has no such power now.—**NORTH LONDON RY. Co. v. GREAT NORTHERN RY. Co.** (1883), 11 Q. B. D. 30; 52 L. J. Q. B. 380; 48 L. T. 695; 31 W. R. 490, C. A.

Annotations:—*Consd.* **London & Blackwall Ry. v. Cross** (1886), 31 Ch. D. 354; **Farrar v. Cooper** (1890), 44 Ch. D. 323; **Wood v. Lillies** (1892), 61 L. J. Ch. 158; **Richardson v. Methley School Board**, [1893] 3 Ch. 510; **Kitts v. Moore**, [1895] 1 Q. B. 253; **Den of Arlie S.S. Co. v. Mitsui & British Oil & Cake Mills** (1912), 106 L. T. 451. *Appl.* **Morgan v. Hart**, [1914] 2 K. B. 183. *Reid.* **Hayward v. East London Waterworks Co.** (1884), 28 Ch. D. 138; **Companhia de Mocambique v. British South Africa Co., De Sousa v. British South Africa Co.**, [1892] 2 Q. B. 358; **Holmes v. Millage**, [1893] 1 Q. B. 551; **Devonport Corp. v. Tozer**, [1902] 2 Ch. 182; **A-G v. Ashborne Recreation Ground Co.**, [1903] 1 Ch. 101. *Mentd.* **Hanly & Fisher v. Mallet** (1888), 3 T. L. R. 71; **Birmingham & District Land Co. v. L. & N. W. Ry.** (1887), 36 Ch. D. 650; **Young v. Thomas** (1892), 40 W. R. 468.

795. ———.]—Jud. Acts & Rules did not alter rights but dealt with procedure (LORD ESHER, M.R.).—SWINDELL v. BULKELEY (1886), 18 Q. B. D. 250; 56 L. J. Q. B. 613; 35 W. R. 189; 3 T. L. R. 183, C. A.

796. ———.]—TOLHURST v. ASSOCIATED PORTLAND CEMENT MANUFACTURERS (1900), LTD., ASSOCIATED PORTLAND CEMENT MANUFACTURERS (1900), LTD. v. TOLHURST, No. 788, ante.

797. ———.]—The sect. [1873 Act, s. 25 (8)] does not give to the cts. either of law or equity any wider jurisdiction than existed before, but enables such orders as could be made before to be made in any proceedings, without commencing special proceedings in the Ct. of Chancery such as were necessary before the Act (BUCKLEY, L.J.).—MORGAN v. HART, [1914] 2 K. B. 183; 83 L. J. K. B. 782; 110 L. T. 611; 30 T. L. R. 286, C. A. *Annotation:—* *Mentd.* **Re A Company, [1915] 1 Ch. 520.**

798. ——— Trespass to land in foreign country.]—The grounds upon which the cts. have hitherto refused to exercise jurisdiction in actions of trespass to lands situate abroad were substantial & not technical, & the rules of procedure under the Jud. Acts have not conferred a jurisdiction which did not exist before (LORD HERSCHELL, C.).—**BRITISH SOUTH AFRICA Co. v. COMPANHIA DE MOCAMBIQUE**, [1893] A. C. 602; 63 L. J. Q. B. 70; 69 L. T. 604; 10 T. L. R. 7; 37 Sol. Jo. 756; 6 R. 1, H. L.; *reusg.* **S. C. sub nom. COMPANHIA DE MOCAMBIQUE v. BRITISH SOUTH AFRICA Co., DE SOUSA v. BRITISH SOUTH AFRICA Co.**, [1892] 2 Q. B. 358, C. A.

Annotations:—*Reid.* **Black Point Syndicate v. Eastern Concessions** (1898), 79 L. T. 658; **Duder v. Amsterdamsch Trustees Kantoor**, [1902] 2 Ch. 122; **Guaranty Trust Co. of New York v. Hannay**, [1915] 2 K. B. 536. *Mentd.* **Adam v. British & Foreign S.S. Co.**, [1898] 2 Q. B. 430; **The Duc D'Aumale** (1902), 87 L. T. 674; **Raymont v. Raymont & Stuart, Chapman & Bulst**, [1910] 1 P. 271.

See, further, CONFLICT OF LAWS, Vol. XI., p. 346, Nos. 332–334.

799. ——— Appointment of receiver.]—1873 Act, s. 25 (8), has not given to the ct. power to appoint a receiver in a case in which the Ct. of Ch. formerly was unable to do so.

Very soon after the passing of the Jud. Acts it was settled in **Salt v. Cooper**, No. 781, *ante*, that, as all branches of the ct. had jurisdiction, it was not necessary to commence a separate proceeding, but the equitable remedy could be given in the action in which the judgment had been recovered; but that case affords no warrant for saying that the equitable jurisdiction now possessed by all branches of the High Ct. & exercisable in the action, differed from or exceeded the old equitable jurisdiction. Some laxity, however, appears to have prevailed, & receivership orders would seem to have been made on the ground of greater convenience, & in many cases *ex p.* only (*per* CUR.).—**HARRIS v. BEAUCHAMP BROTHERS**, [1894] 1 Q. B. 801; 63 L. J. Q. B. 480; 70 L. T. 636; 42 W. R. 451; 9 R. 653, C. A.

Annotations:—*Consd.* **Thompson v. Gill**, [1903] 1 K. B. 760; **Morgan v. Hart**, [1914] 2 K. B. 183. *Reid.* **Tyrell v. Pahlton**, [1895] 1 Q. B. 202; **Ideal Bedding Co. v. Holland**, [1907] 2 Ch. 157. *Mentd.* **Cadogan v. Lyric Theatre**, [1894] 3 Ch. 338; **Re Beauchamp, Ex p. Beauchamp** (1894), 10 T. L. R. 682; **Penn v. Brown**, [1909] 2 K. B. 573.

— On Probate Court.]—*See* Nos. 805, 806, *post*.

— In admiralty matters.]—*See* No. 808, *post*, & generally, ADMIRALTY, Vol. I., pp. 195, 207, 213, Nos. 1102, 1279, 1286, 1287, 1292, 1359 *et seq.*

Application & effect of Acts in particular instances.]—*See* No. 1122 & Sect. 4, *post*; particular Titles *passim*.

ii. On Divisions of High Court.

800. Chancery Division—Special statutory jurisdiction of Chancery Court—Extended prior to 1873 to Admiralty Court.]—Where jurisdiction was given, in respect of a particular kind of proceeding, by an Act passed before the passing of Jud. Acts, to the Ct. of Ch. alone, but, by a later Act, still before the passing of Jud. Acts, the jurisdiction was extended to the Ct. of Admlty., the Ch. Div. now has jurisdiction under Jud. Acts.—**Re THE BRITISH SHIP SANTON** (1878), 26 W. R. 810.

801. ——— Common law jurisdiction as to garnishee proceedings—Under Common Law Procedure Acts.]—Jud. Acts & Rules give the Ch. Div. the jurisdiction formerly vested in the common law cts. only, under the garnishee clauses of C. L. P. Acts.—**Re COWANS' ESTATE, RAPIER v.**

WRIGHT (1880), 14 Ch. D. 638; 49 L. J. Ch. 402; 42 L. T. 866; 28 W. R. 827.

Annotations:—*Mentd.* *Re Slade, Slade v. Hulme* (1881), 30 W. R. 28; *Webb v. Stenton* (1883), 11 Q. B. D. 518.

802. — Jurisdiction of Master of Rolls & of judges of courts at Westminster.—*Re MYER'S PATENT*, [1882] W. N. 53.

—*See, also*, No. 809, *post*.

—**Jurisdiction to grant injunction—Restraining proceedings to assess compensation.**—*See* COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 187, No. 672.

803. King's Bench Division—Jurisdiction of courts of Oyer & Terminer & Gaol Delivery.—Next it was objected that the record should have been brought into this ct. by *certiorari*, & that in this case no writ of *certiorari* had issued. The fact is so, but the objection is groundless. Before 1873 Act as the Cts. of Oyer & Terminer & Gaol Delivery were not parts of the Ct. of Q. B., it was necessary that the Ct. of Q. B. should issue its writ to bring before it a record not of its own, but of another ct. But by 1873 Act, s. 16, the Cts. of Oyer & Terminer & Gaol Delivery are now made part of the High Ct., & their jurisdiction is vested in it (LORD COLERIDGE, C.J.).—*R. v. DUDLEY & STEPHENS* (1884), 14 Q. B. D. 273; 54 L. J. M. C. 32; 52 L. T. 107; 49 J. P. 69; 33 W. R. 347; 1 T. L. R. 118; 15 Cox, C. O. 624, C. C. R.

Annotations:—*Expld.* *R. v. Brooke* (1894), 59 J. P. 6. *Mentd.* *R. v. Stevenon Parish* (1885), 1 T. L. R. 395; *R. v. Staines L. B.* (1888), 4 T. L. R. 364; *R. v. Jameson* (1896), 60 J. P. 677; *Allen v. Flood*, [1898] A. C. 1.

804. Probate, Divorce & Admiralty Division—General rule.—In a suit for nullity of marriage, the ct. has power to give leave to administer interrogatories between the parties to the suit, for suits of that kind were formerly within the jurisdiction of the Ecclesiastical Cts., which had power to allow interrogatories to be administered between the parties, & now all the jurisdiction of the Ecclesiastical Cts. as to suits for nullity of marriage, including matters of practice & procedure, is vested in the Probate, Divorce & Admty. Div. Further, even if the power to allow interrogatories to be administered between the parties does not otherwise exist, it is conferred upon the Probate, Divorce, & Admty. Div. by 1873 Act, for at the time of passing that statute the superior cts. of common law & the Ct. of Ch. had power to allow interrogatories to be administered between the parties to a suit; & by s. 16, all the jurisdiction of those cts., including the ministerial powers & authorities incident thereto, is transferred to & vested in the High Ct. of Justice, & by s. 23 the jurisdiction transferred to the High Ct. may, so far as regards procedure & practice, be exercised in the same manner, as it might have been exercised by any of the cts. whose jurisdiction has been transferred.—*HARVEY v. LOVEKIN* (1884), 10 P. D. 122; 54 L. J. P. 1; 33 W. R. 188; 1 T. L. R. 136, C. A.

Annotations:—*Consd.* *Redfern v. Redfern*, [1891] P. 139.

Mentd. *Martin v. Treacher* (1886), 55 L. J. Q. B. 209.

805. — Probate proceedings—Non-contentious matters.—Jud. Acts have not extended the jurisdiction of the Ct. of Probate in non-contentious matters.—*In the Goods of TOMLINSON* (1881), 6 P. D. 209; 50 L. J. P. 74; 46 L. T. 484; 46 J. P. 73; 30 W. R. 61.

Annotations:—*Mentd.* *In the Goods of Hornbuckle* (1890), 15 P. D. 149; *O'Grady v. Wilmot*, [1916] 2 A. C. 231.

PART XI. SECT. 2, SUB-SECT. 1.— A. (b) ii.

803 i. King's Bench Division—Jurisdiction of Courts of Oyer & Terminer & Gaol Delivery.—Since Jud. Act, Cts. of Oyer & Terminer & Gaol Delivery are no longer inferior or separate cts., but cts.

of equal & co-ordinate jurisdiction, & are part of the High Ct. of Justice along with Common Pleas & other Superior Cts.—*R. v. O'Rourke* (1882), 32 C. P. 388.—CAN.

805 i. Probate Divorce & Admiralty Division—Probate proceedings.—Jud.

806. ——*]*—The Probate Div. has jurisdiction under 1884 Act, s. 14, in the event of any person neglecting or refusing to obey its order to execute a deed, to direct its execution by any other person whom it may nominate for the purpose.—*HOWARTH v. HOWARTH* (1886), 11 P. D. 95; 55 L. J. P. 49; 55 L. T. 303; 34 W. R. 633; 2 T. L. R. 705, C. A.

Annotation:—*Mentd.* *Re Evans, Evans v. Norton*, [1893] 1 Ch. 252.

807. — Divorce & matrimonial causes—Power to allow interrogatories.—*HARVEY v. LOVEKIN*, No. 804, *ante*.

808. — Admiralty proceedings.—Jud. Acts have made no change in the admty. jurisdiction of the High Ct. in England.—*Bow, McLACHLAN & Co. v. SHIP CAMOSUN*, [1909] A. C. 597; 79 L. J. P. C. 17; 101 L. T. 167; 25 T. L. R. 833, P. C.

—*See, further*, ADMIRALTY, Vol. I., pp. 195, 207, 213, Nos. 1102, 1279, 1286, 1287, 1292, 1359 *et seq.*

—*See, now*, Administration of Justice Act, 1920 (c. 81), s. 5.

Exercise of equitable jurisdiction by all divisions of High Court generally.—*See* EQUITY.

iii. On Power to rehear or review.

809. General rule.—The power formerly possessed by the Master of the Rolls & the Vice-Chancellors to rehear & review their own decisions & the decisions of their predecessors, within certain limits of time, was an appellate & not an original jurisdiction, being exercised by them as deputies of the Lord Chancellor in equity; & under 1873 Act, only the original jurisdiction of the Ct. of Ch. was transferred to the High Ct., all its appellate jurisdiction being transferred to the Ct. of Appeal.—*Re Str. NAZAIRE Co.* (1879), 12 Ch. D. 88; 41 L. T. 110; 27 W. R. 854, C. A.

Annotations:—*Consd.* *Re Sufield & Watts, Ex p. Brown* (1888), 20 Q. B. D. 693. *Apld.* *Re Crown Bank* (1890), 44 Ch. D. 634. *Reid.* *Smith v. Smith* (1882), 7 P. D. 84; *Re Swire, Mellor v. Swire* (1885), 30 Ch. D. 239; *R. v. Stonor, Brompton County Court Judge & Reeves* (1888), 57 L. J. Q. B. 510; *Preston Banking Co. v. Allsup*, [1895] 1 Ch. 141; *Bright v. Sellar*, [1904] 1 K. B. 6; *Re Gist*, [1904] 1 Ch. 398; *L. C. v. Dundas*, [1904] P. 1; *Cloutie v. Storey*, [1911] 1 Ch. 18; *Hession v. Jones*, [1914] 2 K. B. 421.

See, further, PRACTICE & PROCEDURE.

810. Judgment of Court of Appeal.—*FALCKE v. SCOTTISH IMPERIAL INSURANCE Co.*, No. 901, *post*.

Suit for dissolution of marriage.—*See* HUSBAND & WIFE.

Order made in bankruptcy.—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 537-539.

B. In relation to Inferior Courts.

(a) Control over.

811. General rule.—The jurisdiction of the Ct. of K. B. extends over all inferior jurisdictions.—*PENSON v. CARTWRIGHT* (1614), Cro. Jac. 345; 79 E. R. 295.

812. ——The Ct. of K. B. has jurisdiction over all other cts. as well in cases of misfeasance as of nonfeasance.—*ANON.* (1658), 2 Sid. 114; 82 E. R. 1286.

813. ——The Ct. of K. B. is the governor & director of all inferior cts.—*NICHOLSON v. SHIRMAN* (1661), 1 Sid. 45; 82 E. R. 960.

Act, 1897 (c. 51), s. 38, which gives the High Ct. of Justice power to try the validity of wills, whether probate has been granted or not, has not been repealed by Jud. Act, 1914 (c. 56), but by s. 12 of that Act is continued in effect.—*GIFFIN v. SIMONTON* (1920), 47 O. L. R. 49.—CAN.

Sect. 2.—The High Court of Justice: Sub-sect. 1, B. (a) & (b); sub-sects. 2, 3 & 4, A., B. & C.; sub-sect. 5.]

814. —.]—This ct. [of K. B.] holds jurisdiction over all inferior cts. (LORD DENMAN, C.J.).—*R. v. SHEFFIELD RY. CO.* (1839), 11 Ad. & El. 194; 1 Ry. & Can. Cas. 537; 3 Per. & Dav. 111; 9 L. J. Q. B. 13; 113 E. R. 388; *sub nom. Ex p. LEIGH v. SHEFFIELD & MANCHESTER RY. CO.*, 4 Jur. 268.

815. Court of King's Bench—Power to mitigate fine.—This Ct. [of K. B.] will not mitigate a fine imposed by an inferior ct., the record whereof is removed here by *certiorari*.

I am not satisfied we have any authority to mitigate a fine; but there is another forum, the Ct. of Exch., before which matters of this kind come (LORD KENYON, C.J.).—*R. v. LOVEDEN* (1800), 8 Term Rep. 615; 101 E. R. 1577.

By prohibition.—See CROWN PRACTICE, pp. 372 *et seq.*, *post*.

By certiorari.—See CROWN PRACTICE, pp. 398 *et seq.*, *post*.

By mandamus.—See CROWN PRACTICE, pp. 276 *et seq.*, *post*.

(b) *Appeals from.*

See Jud. Act, 1873 (c. 66), s. 45.

816. To King's Bench—General rule.—(1) An appeal from any inferior ct. of record of civil jurisdiction, when there is no statute regulating the appeal, can now be brought to the K. B. Div. under R.S.C., Ord. 59, rr. 10–17.

(2) An appeal lies to the High Ct. from a decision of the Borough Ct. of Record at Preston.—*DARLOW v. SHUTTLEWORTH*, [1902] 1 K. B. 721; 71 L. J. K. B. 460; 86 L. T. 524; 66 J. P. 516; 50 W. R. 668; 18 T. L. R. 419.

Annotations:—As to (1) Reidd. West v. Bristol Tram. & Carriage Co. (1908), 72 J. P. 145 & 72 J. P. Jour. 159; *R. v. Wiltshire J.J.*, *Ex p. Jav* (1912), 10 L. G. R. 353.

Error apparent on face of proceedings.]

— See Nos. 925, 926, *post*.

Appeal from court baron.]—See COPYHOLDS, Vol. XIII., p. 32, No. 302.

Appeals from quarter sessions—By case stated.]—See MAGISTRATES.

Appeals from county courts.]—See COUNTY COURTS, Vol. XIII., pp. 533, 531.

Appeals from proceedings relating to election petitions.]—See ELECTIONS.

Appeals from chambers.]—See PRACTICE & PROCEDURE.

Appeals from reference to master.]—See ARBITRATION, Vol. II., pp. 633, 634, Nos. 2606, 2612.

Taxation of master—Under Lands Clauses Consolidation Act, 1845 (c. 18).]—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 211, No. 958.

Under Midwives Act, 1902 (c. 17), s. 4.]—See MEDICINE & PHARMACY.

817. To Court of Chancery—Matters of equity from City of London Small Debts Court.]—City of London Small Debts Ct. is not a county ct. within County Courts Act, 1865 (c. 99), & therefore, although by that Act the same jurisdiction in equity is conferred on that ct. as is thereby conferred on county cts., no appeal lies, under s. 18 of the Act, in matters of equity from such ct. to the Ct. of Ch.—*HARPER v. POLE* (1867), L. R. 3 Eq. 752; 36 L. J. Ch. 375; 16 L. T. 50; 31 J. P. 323; 15 W. R. 502.

Annotations:—Apld. Gardiner v. Cachar Co. (1867), 36 L. J. Ch. 432. *Reidd. The Ganges* (1880), 43 L. T. 12.

818. —.]—Under County Courts Act, 1865, no appeal lies from a decision in equity of

the judge of the City of London Small Debts Ct.—*GARDINER v. CACHAR CO., LTD.* (1867), 36 L. J. Ch. 432.

To Court of Admiralty.]—See ADMIRALTY, Vol. I., pp. 230–232.

To Probate, Divorce & Admiralty Division—Under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 11.]—See HUSBAND & WIFE.

To Court of Appeal.]—See SECT. 3, sub-sect. 2, B. (a), *iv.*, *post*.

Procedure in relation to appeals.]—See No. 1122, *post*, & generally, PRACTICE & PROCEDURE.

Appeals in forma pauperis—Generally.]—See PRACTICE & PROCEDURE.

From county court.]—See COUNTY COURTS, Vol. XIII., p. 533, No. 847.

To Court of Appeal.]—See SECT. 3, sub-sect. 2, A. (b), *post*.

SUB-SECT. 2.—JURISDICTION OF KING'S BENCH DIVISION.

See Jud. Act, 1873 (c. 66), s. 34.

Territorial jurisdiction.]—See Part IV., SECT. 3, sub-sect. 1, C., *ante*.

Over inferior courts.]—See SECT. 2, sub-sect. 1, B., *ante*.

Effect of Judicature Act, 1873 (c. 66).]—See No. 803, *ante*.

819. —.] *R. v. DAVIES*, No. 776, *ante*.

In criminal causes.]—See CRIMINAL LAW & PROCEDURE.

To grant bail to person impeached by House of Commons.]—See PARLIAMENT.

To enforce compromise of divorce suit—By making agreement order of court.]—See HUSBAND & WIFE; PRACTICE & PROCEDURE.

Appellate jurisdiction.]—See Nos. 811–811, *ante*.

SUB-SECT. 3.—JURISDICTION OF CHANCERY DIVISION.

See Jud. Act, 1873 (c. 66), s. 34 (1)–(3).

Equitable jurisdiction generally.]—See EQUITY.

820. Action in another division—Right to restrain—Power to enforce undertaking that judgment so obtained shall be dealt with as Chancery Division shall direct.]—The Ch. Div. cannot as a rule restrain an action in another division, but it may enforce an undertaking by a plff. in the Ch. Div. that the judgment obtained shall be dealt with as the Ch. Div. shall direct.—*FLETCHER v. WOOD* (1876), 2 Char. Pr. Cas. 65.

821. —.] **Right to enforce compromise of.]**—S. commenced an action in the Common Pleas Div. against D., to recover a commission claimed for services in obtaining payment of a sum from a foreign govt. This sum was being administered in the Ch. Div., & S. commenced an action in that division to establish a lien on D.'s interest, & to prevent the fund from being paid away. In this action an order was made for a sum of £5,000 to be set apart in the joint names of the solrs. of plff.

deft. to answer plff.'s claim, & all further proceedings were stayed until after the trial of the action in the Common Pleas Div., & general liberty to apply was given. Shortly after this the solrs. of plff. & deft., by the authority of their clients, came to a definite arrangement by letter as to the amount of plff.'s claim. Plff. then applied for directions that this amount might be paid to him out of the fund set apart:—*Held*: the ct. had authority to make an order enforcing the compromise of the action in the Common Pleas

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Sect. 2.—The High Court of Justice: Sub-sect. 5.]

solr. for his costs (LINDLEY, J.).—**CLOVER v. ADAMS** (1881), 6 Q. B. D. 622, D. C.

Annotations:—*As to* (2) *Refd. Re Thomas*, [1893] 1 Q. B. 670. *Generally, Mentd. Re Wadsworth, Rhodes v. Sugden* (1885), 29 Ch. D. 517; *Bluck v. Lovering* (1886), 35 W. R. 232.

831. — Meaning of "chambers."]—(1) R. S. C., Ord. 1, r. 2, which preserves the procedure & practice under Interpleader Acts in actions in the High Ct., does not contradict Jud. Act, 1873 (c. 66), s. 49, which enacts that no order of a judge of the High Ct. as to costs only, shall be subject to appeal without leave of such judge, & such enactment applies to a judge's order in interpleader as well as in other proceedings.

(2) A judge at Westminster, sitting not in open ct. but as a judge at chambers, has jurisdiction to hear a summons referred to him by the judge at chambers.

I am of opinion that this appeal must be dismissed. I will deal first with the point as to whether Hawkins, J. [the judge who sat at Westminster] had jurisdiction to make the order. I think it must be taken that when he made the order he was acting as a judge sitting, not in ct., but to determine a summons which had been taken out before a judge at chambers. A judge sitting in chambers does not mean that he is sitting in any particular room, but that he is not sitting in open ct. In this case the summons first came before Cave, J. at chambers, & he desired that it should be heard before Hawkins, J. It is admitted that if he had said Hawkins, J. will be at chambers to-morrow, & I adjourn the summons until then for him to hear it, he could have done so. What he did, I think, was practically the same thing. He sent the summons to be heard by Hawkins, J., who heard it, sitting, not in open ct. but as a judge at chambers. It seems to me, therefore, that he had jurisdiction to make the order (**BRETT, L.J.**).—**HARTMONT v. FOSTER** (1881), 8 Q. B. D. 82; 51 L. J. Q. B. 12; 45 L. T. 429; 30 W. R. 129, C. A.

Annotation:—*As to* (1) *Refd. Field v. Rivington* (1889), 5 T. L. R. 642.

Meaning of "court or judge."]—See Nos. 841, 850, 856, 868, *post*.

832. ——**]**—When the rules [of the Supreme Ct.] say "the ct. or a judge," it is understood that "the ct." means a judge or judges in open ct., & "a judge" means a judge sitting in chambers (**KAY, L.J.**).—*Re B—*, [1892] 1 Ch. 459; 66 L. T. 38; 40 W. R. 309; *sub. nom. Re BATHE*, 61 L. J. Ch. 446, C. A.

833. — Meaning of "court."]—Application to set aside the findings of a referee appointed under Jud. Act, 1873 (c. 66), s. 57, & to try the issues of fact in an action & report to the judge making the order of reference, must be made to a Div. Ct. & not to the judge, as such findings are, by s. 58, equivalent to the verdict of a jury & can only be set aside by the ct.—**COOKE v. NEWCASTLE & GATESHEAD WATER CO.** (1882), 10 Q. B. D. 332; 52 L. J. Q. B. 337.

834. ——**]**—The word "ct." includes the judges thereof, that is to say, the judges of the ct. represent the ct. (**BRETT, M.R.**).—**DALLOW v. GARROLD** (1884), 14 Q. B. D. 543; 54 L. J. Q. B. 70; 52 L. T. 240; 1 T. L. R. 114, C. A.

Annotations:—*Mentd. Re Sniffell & Watts, Ex p. Brown* (1888), 20 Q. B. D. 693; *Cole v. Eley* (No. 1) (1894), 38 Sol. Jo. 533; *The Paris*, [1896] P. 77; *Watts v. Heley* (1899), 44 Sol. Jo. 184; *Re Deakin, Ex p. Daniell*, [1900] 2 Q. B. 489; *The Marie Gartz* (No. 2), [1920] P. 460.

835. — Meaning of "judge."]—**Held:** "judge" in Supreme Ct. of Judicature (Procedure) Act, 1894 (c. 16), s. 1 (1), (b) meant a judge sitting alone & did not include a Div. Ct.—**RUF** (T. A.) & **Co. v. PAUWELS**, [1919] 1 K. B. 660; 88 L. J. K. B. 674; 121 L. T. 36; 83 J. P. 150; 35 T. L. R. 322; 63 Sol. Jo. 372, C. A.

836. ——**]**—An under-sheriff, before whom damages are assessed in an action brought in the High Ct. under a judgment signed in default of pleading, has no power to certify for costs on the High Ct. scale under County Cts. Act, 1888 (c. 43), s. 116, such power being now, under that sect., exercisable only by the High Ct., or a judge of the High Ct.—**COX v. HILL** (1892), 67 L. T. 26; 36 Sol. Jo. 446, D. C.

Annotation:—*Refd. Haycocks v. Mulholland*, [1904] 1 K. B. 145.

837. ——**]**—In the second place, I do not think that the master has power to extend the twenty-one days allowed for obtaining judgment under R. S. C., Ord. 14, with High Ct. costs. The statutory power under County Cts. Act, 1888 (c. 43), s. 116, is given only to a judge (**PHILLIMORE, J.**).—**HAYCOCKS, LTD. v. MULHOLLAND** [1904] 1 K. B. 145; 73 L. J. K. B. 125; 90 L. T. 88; 52 W. R. 400, D. C.

838. ——**]**—(1) *Pltf.*, having obtained judgment, was by an order made at chambers appointed receiver of the rents of some houses belonging to *deft.*; the order was made without prejudice to prior incumbrances. *G.* having applied to discharge the order appointing the receiver on the ground that he was a second *mtgee.* under a deed executed by *deft.* before the judgment in the action, the Q. B. Div. referred the question as to the validity of *G.*'s *mtge.* to a master, who after hearing evidence reported that the *mtge.* was a sham & had been executed in order to defeat *deft.*'s creditors. The Q. B. Div. declined to review the evidence upon which the master had acted, accepted his report as conclusive, & refused *G.*'s application:—**Held:** inasmuch as the receiver was appointed under an equitable jurisdiction now vested in the Q. B. Div., the evidence before the master might have been reviewed; & the Ct. of Appeal being of opinion on the evidence that the *mtge.* had been executed in good faith, discharged the order made at chambers, whereby *pltf.* was appointed receiver.

(2) The present case must be decided by the practice introduced by Jud. Acts. The order appointing a receiver was made, because those statutes have invested a judge sitting at chambers with an equitable jurisdiction. In the Ct. of Ch. a summons to vary or discharge that order would have gone before the same judge, unless he was dead or had resigned his office. But in the Q. B. Div. the judge sitting at chambers for the time being represents the ct.; & the judge at chambers may be different, yet the tribunal & the jurisdiction are the same. The practice in the Q. B. & the Ch. Divs. cannot be in all respects identical; & it was perfectly right that the judge at chambers, acting as deputy for the judge who was sitting at chambers when the order appointing the receiver was made, should refer the summons to vary or discharge that order to the Div. Ct. The ct. was the same as that in which the order of appointment had been made (**BRETT, M.R.**).—**WALMSLEY v. MUNDY** (1884), 13 Q. B. D. 807; 53 L. J. Q. B. 304; 50 L. T. 317; 32 W. R. 602, C. A.

Annotation:—*Generally, Mentd. Chance & Hunt v. G. W. Ry., L. & N. W. Ry., Mid. Ry. & North Staffordshire Ry.* (1914), 15 Ry. & Can. Tr. Cas. 241.

839. To order delivery up of mortgage.]—*SMEETON v. COLLIER*, No. 829, *ante*.

840. To cancel solicitor's articles.]—An infant, a ward of ct., had, with the approbation of the ct., been articulated to a solr., to whom a premium of £315 had been ordered to be paid. Subsequently, in consequence of differences between the solr. & his articulated clerk, who desired to change his profession & applied to the ct. to have the articles cancelled, an order was made by the judge in chambers for their cancellation, & that £100, part of the premium, should be repaid:—*Held*: (1) the judge in chambers had no jurisdiction, in the absence of evidence of the misconduct of the solr., to order such repayment: (2) it was very requisite that the jurisdiction exercised by the judges of the Ct. of Ch. in chambers should be confined within its proper bounds, & the grounds on which it was exercised should be stated & recorded, where an adverse order had been made.—*CRAVEN v. STUBBINS* (1864), 34 L. J. Ch. 126; 11 L. T. 402; 10 Jur. N. S. 1189; 13 W. R. 208, L. C.

Annotation:—Generally, *Mentd. Whincup v. Hughes* (1871), L. R. 6, C. P. 78.

841. To make order as to costs—Of trial previously held before him.]—A jury returned a verdict for a small amount beyond a sum paid into ct.; no application as to costs was made at the trial, but some time afterwards the judge who tried the action, sitting at chambers, made an order depriving pltf. of costs from the time of the payment into ct.:—*Held*: the judge had no jurisdiction to make the order, either as the judge who tried the action, because no application had been made at the trial as required by R. S. C., Ord. 55, & R. S. C., Ord. 57, r. 6, did not apply to the case; or as the judge at chambers, because Ord. 55, expressly confined the power to the ct., & Jud. Act, 1873 (c. 66), s. 39, did not apply, as no such power existed before the Act.

"A ct. or a judge" means the ct. sitting *in banc* or a judge at chambers representing the ct. *in banc*. It has never been held that such a phrase comprised a judge, who was neither the court nor acting at chambers, merely because he was the judge at the trial. It was further argued that Jud. Act, 1873, s. 39, applied; but that sect. does not enable a judge of the High Ct. to do anything that a judge could not have done before the passing of the Act; & before the passing of the Act a judge at chambers could not have made this order as to costs (*BRETT, J.A.*).—*BAKER v. OAKES* (1877), 2 Q. B. D. 171; 46 L. J. Q. B. 246; 35 L. T. 832; 25 W. R. 220, C. A.

Annotations:—*Consd. Tyne Alkali Co. v. Lawson* (1877), 36 L. T. 100; *Turner v. Heyland* (1879), 4 C. P. D. 432; *Marsden v. L. & Y. Ry.* (1880), 42 L. T. 630. *Reid. Callender v. Hawkins* (1877), 2 C. P. D. 592; *General Steam Navigation Co. v. London & Edinburgh Shipping Co.* (1877), 2 Ex. D. 467; *Wimshurst, Hollick v. Barrow Ship Building Co.* (1877), 46 L. J. Q. B. 477; *Bowey v. Bell* (1878), 4 Q. B. D. 95; *Myers v. Defries, Siddons v. Lawrence* (1879), 4 Ex. D. 176; *Marsden v. L. & Y. Ry.* (1881), 50 L. J. Q. B. 318.

842. — On discontinuance of action—Good defence undisputed.]—(1) Upon an application by a pltf. for leave under R. S. C., Ord. 26, r. 1, to discontinue an action, the ct. or judge has no jurisdiction to make deft. pay any costs of a defence, which, if undisputed, or if it had been found in deft.'s favour, would have disentitled pltf. from maintaining his action.

(2) Where a ct. or judge is expressly given a discretion as to costs, the exercise of such discretion cannot be delegated.

Two points have been raised by deft. in this

case, on both of which I am of opinion that he ought to succeed: (a) that there was no jurisdiction in the judge at chambers to make this order at all, & (b) that there was no jurisdiction in the judge to delegate the determination of what costs deft. should pay. The order is bad on both grounds. As long as a good plea in defence of the action stands undisputed on the record, & one that, if found in deft.'s favour, would show that pltf. had no right to bring the action at all, the ct. has no jurisdiction to give pltf. the costs (*LORD COLERIDGE, C.J.*).—*LAMBTON & Co. v. PARKINSON* (1887), 35 W. R. 545, D. C.

Annotations:—As to (1) *Distd. Musman v. Borot* (1892), 66 L. T. 171. *Lambton v. Parkinson* does not stand in our way because deft. in this case is not ordered to pay pltf.'s costs as he was in that case, but only to pay his own (*CAVE, J.*). *Reid. Lloyds Bank v. Princess Royal Colliery Co.* (1900), 82 L. T. 559.

843. — — —.]—In an application by pltf. to have all proceedings stayed in the action, the defence having been admitted, the judge made an order, under R. S. C., Ord. 26, r. 1, that all proceedings should be stayed, each party to bear his own costs except such as in the opinion of the master to whom the matter was referred for taxation were occasioned by any proceedings unnecessarily taken by pltf.:—*Held*: the judge had jurisdiction to make such order, & it was no delegation of his discretion to the master to do so.—*MUSMAN v. BORET* (1892), 66 L. T. 171; 40 W. R. 352, D. C.

See, generally, PRACTICE & PROCEDURE.

844. — Of inquiry by Law Society—Into charges of misconduct against solicitor.]—Where a solr. has been exonerated from charges brought against him on an inquiry before the committee of the Incorporated Law Society, under Solrs. Act, 1888 (c. 65), s. 13, an application by him for the costs of the inquiry must be made to the Div. Ct., & not to a judge at chambers.

I think that the case of *Smeeton v. Collier*, No. 829, *ante*, shows that, where jurisdiction is given to this ct. by the term "the ct.," this ct. has power to delegate that jurisdiction to a single judge, unless the Legislature has provided that it is the ct., & not a single judge, who shall do the work. I think that the ct. has power in the arrangement of its business, as was pointed out in *Smeeton v. Collier*, to make a rule that a judge in chambers, that is, that the ct., by means of one of its judges, who may be sitting in chambers, shall do that which the Legislature has said the ct. shall have power to do. I think, therefore, that although originally this kind of power was exercised by the ct. sitting in public, as we are now sitting, it is perfectly competent for the ct. to order that the matter shall be disposed of by one of the judges of the ct. sitting in chambers. That would no doubt require a rule to be made by the Rule Committee, & one can see that it would be a great convenience that such a rule should be made; but as it has not been made, I do not think that a judge at chambers in this case has power to hear this application, & therefore that we must hear it (*DARLING, J.*).—*Re DAVIDSON, Ex p. DAVIDSON*, [1899] 2 Q. B. 103; 68 L. J. Q. B. 836; 81 L. T. 182, D. C.

845. To make charging order—Against property recovered—In respect of solicitor's costs.]—*CLOVER v. ADAMS*, No. 830, *ante*.

See, further, EXECUTION; SOLICITORS.

846. To appoint receiver.]—*WALMSLEY v. MUNDY*, No. 838, *ante*.

See, generally, RECEIVERS.

847. To order sale by private contract—Under Bankruptcy Act, 1883 (c. 52), s. 145.]—*HUNT v.*

Sect. 2.—The High Court of Justice: Sub-sects. 5 & 6, A. & B.]

CLIFFORD, [1884] W. N. 86; Bitt. rep. in Ch. 136.

848. To issue writ of attachment.]—A judge at chambers has power to give leave to issue a writ of attachment.

R. S. C., Ord. 44, r. 2, enacted that thenceforth no attachments should issue "without the leave of the ct. or a judge, etc." Now by Jud. Act, 1873 (c. 66), s. 39, already alluded to, "any judge sitting in ct. shall be deemed to constitute a ct." Therefore the case of a single judge sitting in ct. is included under the term "ct.," & "judge" can only mean a judge sitting at chambers (HUDDLESTON, B.).—SALM KYRBURG v. POSNANSKI (1884), 13 Q. B. D. 218; 53 L. J. Q. B. 428; 32 W. R. 752, D. C.; *affd.*, 53 L. J. Q. B. 430, n., (C. A. Annotation:—*Folld.* Amstell v. Lesser (1885), 16 Q. B. D. 187.

To grant writ of prohibition.]—See CROWN PRACTICE.

To set aside writ of prohibition.]—See CROWN PRACTICE.

849. To delegate discretionary jurisdiction.]—LAMBTON & Co. v. PARKINSON, No. 842, *ante*.

850. To set aside agreement between solicitor & client as to costs—Under Attorneys & Solicitors Act, 1870 (c. 28), s. 8.]—An application under the above sect. made in the Q. B. Div., to set aside an agreement between a solr. & his client as to costs, may be made at chambers upon a summons.

S. 8 goes on to say that the jurisdiction may be exercised "by the ct. or a judge thereof." It is therefore clear that the Act meant that it might be exercised by a single judge. It is said that after the passing of the Jud. Acts the jurisdiction given to a single judge is gone, because there is no such thing in the common law cts. as a single judge sitting in ct. to hear motions. But I am of opinion that the general jurisdiction of a single judge to act for the ct. was preserved by Jud. Act, 1873 (c. 66), s. 39 (WILLS, J.).—*Re* THOMAS, [1893] 1 Q. B. 670; 62 L. J. Q. B. 474; 68 L. T. 759; 41 W. R. 524; 37 Sol. Jo. 458; 5 R. 387, D. C.

851. To set aside award in form of special case.]—A motion to set aside an award stated in the form of a special case may be heard by a judge of the High Ct. sitting alone, it not being a proceeding on the Crown side of the K. B. Div., within R. S. C., Ord. 59, r. 1, & there being no rule requiring such a motion or application to be made to a Div. Ct.—PRODUCE BROKERS, LTD. v. BLYTH, GREENE, JOURDAIN & Co., LTD. (1918), 88 L. J. K. B. 597; 119 L. T. 311; 34 T. L. R. 419.

Annotation:—Folld. *Re* Cowan & Rymer, [1919] W. N. 140.

852. S. P. *Re* COWAN BROTHERS, LTD. & RYMER & Co., [1919] W. N. 140, D. C.

853. Form of order—Necessity for statement of grounds on which jurisdiction exercised.]—GRAVEN v. STUBBINS, No. 840, *ante*.

854. Appeal.]—A judge at chambers having made an order under the Judgments Act, 1838 (c. 110), s. 14, & Judgments Act, 1840 (c. 82), s. 1, charging an annuity payable out of the Suitors' Fund, by order of the Lord Chancellor, in pursuance of the provisions of 46 Geo. 3, c. 128, the ct., considering it doubtful whether or no the judge's order was valid, refused to set it aside, as, by so doing, they would deprive the party of the right of appeal.

Whenever a jurisdiction is conferred by statute on a judge of the superior cts., it is subject to

appeal to the ct., unless there is something in the context leading to a contrary conclusion (PARKE, B.).—WITHAM v. LYNCH (1847), 1 Exch. 391; 17 L. J. Ex. 13; 10 L. T. O. S. 168; 154 E. R. 166. *Annotations:—Refd.* Graham v. Connell (1850), 1 L. M. & P. 438; Robinson v. Burbridge (1850), 9 C. B. 289.

Interpleader proceedings.]—See INTERPLEADER.

See, also, R. S. C., Ord. 54, rr. 23, 24.

SUB-SECT. 6.—JURISDICTION OF MASTERS.

A. King's Bench Division.

See Judges' Chambers Despatch of Business Act, 1867 (c. 68); R. S. C., Ord. 54, rr. 12, 12A.

855. General rule.]—A master has jurisdiction under R. S. C., Ord. 58, r. 16, to stay execution on a judgment pending an appeal to the Ct. of Appeal.

Under R. S. C., Ord. 54, r. 12, a master has all the jurisdiction of a judge at chambers, except in certain specified instances of which this is not one (BOWEN, L.J.).—OPPERT v. BEAUMONT (1887), 18 Q. B. D. 435; 56 L. J. Q. B. 216; 35 W. R. 266, C. A.

856. — Meaning of "court."—NATIONAL PROVINCIAL & UNION BANK OF ENGLAND v. BECKWITH, [1920] W. N. 157, C. A.

— Distinction between King's Bench Division & Chancery Division masters.]—*See* No. 868, *post*.

857. To make order as to costs.]—Where, in consequence of the party interrogated answering insufficiently, an order was made by the master for his examination *visd voce* before a special examiner:—*Held*: there was power under R. S. C., Ord. 31, r. 10, & Ord. 55, r. 1, or the general practice of the ct., to make it a term of the order that the costs of, & occasioned by, the application should be paid by the party interrogated "in any event."

Even if the power be not conferred by Ord. 55, r. 1, I think that a discretionary power of the same character existed at the date of Jud. Act, 1873 (c. 66), & which was not affected by the Act or the rules made under it, & that it would warrant the master in making this order (DENMAN, J.).—VICARY v. GREAT NORTHERN RY. CO. (1882), 9 Q. B. D. 168; 51 L. J. Q. B. 462, C. C.

Annotation:—Mentd. Mitchell v. Darley Main Colliery Co. (1883), 10 Q. B. D. 457.

858. —.]—Under R. S. C., Ord. 54, r. 12 (i), the master in making an order barring the claimant upon an interpleader summons under Ord. 57, when appt. is a deft., has no power under r. 15 to make it a term of the order that pltf. shall pay the costs of deft. in the original action, apart from those in the interpleader proceedings, & an order to this effect is, notwithstanding Jud. Act, 1873 (c. 66), s. 49, subject to appeal.—HANSEN v. MADDOX (1883), 12 Q. B. D. 100; 53 L. J. Q. B. 67; 50 L. T. 123; 32 W. R. 183, D. C.

See, now, R. S. C., Ord. 54, r. 12.

859. — Delegation of judge's discretionary jurisdiction.]—LAMBTON & Co. v. PARKINSON, No. 842, *ante*.

860. —.]—MUSMAN v. BORET, No. 813, *ante*.

861. To order sale by private contract—Under Bankruptcy Act, 1883 (c. 52), s. 145.]—HUNT v. CLIFFORD, [1884] W. N. 86; Bitt. rep. in Ch. 136.

862. To stay execution—Pending appeal.]—OPPERT v. BEAUMONT, No. 855, *ante*.

863. To initial interlineation in affidavit—In matters coming before Chancery Division.]—An interlineation in an affidavit, sworn in support of an application to the Ch. Div. for the production

of a *cestui que vie*, was not initialed by the notary before whom the affidavit was sworn. The filing officer refused to file the affidavit, & sent it to a practice master of the Q. B. Div., who initialed the interlineation, & the affidavit was thereupon filed. An order was made for the production of the *cestui que vie*, but the registrar refused to draw up the order. Upon motion for the direction of the ct.:—*Held*: a practice master of the Q. B. Div. had no jurisdiction in matters coming before the Ch. Div., & according to the practice of the Ch. Div., the affidavit ought not to have been filed without an order of the ct.—*Re CLOAKE* (1891), 61 L. J. Ch. 69; 65 L. T. 455; 40 W. R. 74; 36 Sol. Jo. 29.

864. To discharge order—Charging order on shares.—A master having once granted a charging order *nisi* upon shares in a public co. upon an *ex p.* application under Judgments Act, 1838 (c. 110), ss. 14, 15, is *functus officio* & except by consent, has no jurisdiction to discharge it.—*MITCHELL v. DE VESEY* (1892), 67 L. T. 53, D. C.

See, now, R. S. C., Ord. 51, r. 12.

865. To make order for payment within limited time—& in default for leave to issue writ of sequestration—After judgment for recovery of money.—Upon a judgment for the recovery of money with costs, the master made an order for the payment of the amount recovered with taxed costs within a limited time & in default for a writ of sequestration to issue:—*Held*: the master had no jurisdiction derived from the Ch. practice to make an order limiting the time for payment upon which alone a writ of sequestration could issue, on the ground that a judgment at common law to recover money is not analogous to a decree in Ch. ordering the payment of money.—*HULBERT & CROWE v. CATHCART*, [1891] 1 Q. B. 241; 63 L. J. Q. B. 121; 70 L. T. 558, D. C.

Annotations:—*Reid*. *Re Oddv. Major v. Harness*, [1906] 1 Ch. 93. *Mentd.* *Hood-Barrs v. Cathcart* (1894), 71 L. T. 11.

866. To order inquiry in High Court—As to compensation payable on compulsory acquisition of land.—A question of compensation having arisen, under the Lands Clauses Consolidation Act, 1845 (c. 18), between a claimant & a railway co., the co., before issuing their warrant to the sheriff to summon a jury, applied under Regulation of Railways Act, 1868 (c. 119), s. 41, to a master for an order for the trial of the question in the High Ct. The master refused the application, & the co. appealed to a judge who made the order. In the meantime, & before the judge made the order, the co. issued their warrant to the sheriff. On an appeal by claimant against the order of the judge:—*Held*: the jurisdiction conferred by the above sect. is now vested in the judges of the High Ct. & may, except as to the settling of an issue in case of difference, be exercised by a master under R. S. C., Ord. 54, r. 12.

The material question in this case is whether the master had jurisdiction to make the order. Before Jud. Act, 1873 (c. 66), he could not have done so, & we must look at that Act to see how the jurisdiction of the old superior cts. is dealt with, & what jurisdiction is transferred to the High Ct. That depends on s. 16 of the Act, & the effect of that sect. is, in my judgment, to transfer the statutable power given by Regulation of Railways Act, 1868, s. 41, to the High Ct. to be exercised by the judges of that ct., or any judge of that ct. sitting in chambers. If the case stopped there that would be sufficient so far as the jurisdiction of the judge is concerned; but in dealing with the question of the jurisdiction of the master, we

must look to R. S. C., Ord. 51, r. 12. Having regard to this rule, the matter stands thus: s. 16 shows that this jurisdiction may be exercised by a judge of the High Ct., & Ord. 54, r. 12, says that the master shall have the same power as a judge in respect of certain matters, including this case, but subject to certain exceptions (*LOPES, L.J.*).—*Re DONISTHORPE & MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. Co.*, [1897] 1 Q. B. 671; 66 L. J. Q. B. 399; 76 L. T. 371; 45 W. R. 386; 13 T. L. R. 311; 41 Sol. Jo. 403, C. A.

867. To order removal of action—From inferior court to High Court—By certiorari.—An application was made to a master of the K. B. Div. for a writ of *certiorari* to remove into the High Ct. an action which had been commenced in the Mayor's Ct. The master made an order removing the action into the High Ct. On appeal from that order the judge in chambers held that he was not entitled to interfere with the exercise by the master of his discretion, & he accordingly dismissed the appeal:—*Held*: even if the master had jurisdiction to make the order for a *certiorari* the judge had power to exercise, & ought to have exercised, his own discretion with regard to the matter upon the hearing of the appeal.

Qu.: whether an application for a writ of *certiorari* to remove a case from the Mayor's Ct. into the High Ct. can be made to a master of the K. B. Div.

The inclination of my opinion is that that application ought to be made in the first instance to the judge at chambers & not to the master (*AVORY, J.*).—*DIRECT PHOTO ENGRAVING Co. v. MARTIN*, [1921] 2 K. B. 187; 90 L. J. K. B. 727; 125 L. T. 284, D. C.

Removal of actions by certiorari generally.—*See COUNTY COURTS*, Vol. XIII., pp. 543 *et seq.*; *CROWN PRACTICE* pp. 398 *et seq.*, *post*.

B. Chancery Division.

868. Distinction between Chancery Division & King's Bench Division masters.—In applications under R. S. C., Ord. 26, r. 1, the master has jurisdiction to make an order for the judge; the words "the ct. or a judge" do not mean only the judge in person. An order made by a master in the Ch. Div. is an order made by the ct. or a judge.

The right of every suitor in the Ch. Div. to have any question determined by the judge personally is beyond question & the adjournment to the judge is not in the nature of an appeal. All orders made in chambers are orders of the judge, though taken without the parties actually going before him (*BYRNE, J.*).

The duties of the masters in the Ch. Div. & the Q. B. Div. are quite different (*BYRNE, J.*).—*LLOYD'S BANK v. PRINCESS ROYAL COLLIERY Co.* (1900), 82 L. T. 559; 48 W. R. 427; 44 Sol. Jo. 409.

869. Order of master is order of judge—Right of parties to bring matter before judge personally.

—The chief clerk in chambers never makes any order of his own authority, but all the orders made in chambers are orders of the judge, & are, in fact, made by him in the presence of the parties, unless they agree for their own convenience to take the order without actually going before the judge in chambers, or unless the order is such an order of course as would be made in ct. without communication with the judge, upon simply handing in a brief to the registrar; such last-mentioned order, when made in chambers, being

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made upon the communication of the chief clerk to the registrar without the actual intervention of the judge.

The judge in chambers is always accessible to any of the parties who are engaged in proceedings there, & any party suggesting that he wishes to see the judge personally can at once do so.—*HAYWARD v. HAYWARD* (1854), Kay, App. xxxi; 69 E. R. 329; *sub nom. HAYWARD v. PRICE*, 2 Bq. Rep. 436; 23 L. J. Ch. 549; 22 L. T. O. S. 345; 2 W. R. 332.

Annotations:—*Mentl. Re Electric Telegraph Co. of Ireland, Ex p. Bunn* (1857), 24 Beav. 137; *Croskey v. European & American Steam Shipping Co.* (1866), 14 W. R. 514.

870. ———.]—Upon proceedings in chambers any party has a right at any time to have any question brought before the judge personally, there being no such thing as an appeal from the chief clerk's decision.—*WADHAM v. RIGG* (1862), 2 Drew. & Sm. 78; 6 L. T. 180; 8 Jur. N. S. 206; 62 E. R. 551; *sub nom. Re Rigg, WADHAM v. RIGG*, 10 W. R. 365.

871. ———.]—Any party to a cause, matter or winding-up in chambers has a right at any time to require that any matter, however trivial, shall be brought before the judge personally whether there is any dispute or controversy with respect to such matter, or not.—*Re HOME COUNTIES LIFE ASSURANCE CO., Ex p. GARSTIN* (1862), 6 L. T. 374; 10 W. R. 457.

872. ———.]—H. & Co., mtgees., sold the property comprised in their mtge. under a power of sale, & claimed to retain two sums of £1300 & £138. The question was raised on summons in an action for the administration of the mtgor.'s estate. The chief clerk was prepared to make an order without costs against H. & Co. to pay into ct. the balance of purchase-money in their hands without deducting the £138; but H. & Co. insisted on having the case heard by the judge. The judge having ordered H. & Co. to pay in the balance without deducting the £138, & to pay the costs of the adjournment to him as being in the nature of an unsuccessful appeal, H. & Co. appealed:—*Held*: the adjournment to the judge was not in the nature of an appeal, it being the right of H. & Co. to have the point heard by the judge personally &, even if they had been wrong on the merits, they ought not to have been ordered to pay costs, for a mtgee. cannot be deprived of costs merely because he claims *bonâ fide* something more than the ct. holds him entitled to.

The second point is this: the brewers having lost the case in the ct. below, were ordered to pay a portion of the costs. It appears to me that this was an entire mistake. The chief clerk decided against them, & they then took the case to the judge. That is not an appeal. They were entitled to have the opinion of the judge, & especially so on such a point as this, a point of construction of a serious & arguable kind (*JESSEL, M.R.*).—*Re WATTS, SMITH v. WATTS* (1882), 22 Ch. D. 5; 52 L. J. Ch. 209; 48 L. T. 167; 31 W. R. 262, C. A.

Annotations:—*Reid. Lloyd's Bank v. Princess Royal Colliery Co.* (1900), 82 L. T. 559. *Mentl. Bird v. Wenn* (1886), 33 Ch. D. 215; *Ledbrook v. Passman* (1888), 57 L. J. Ch. 855; *Kinnaird v. Trollope* (1889), 42 Ch. D. 610; *Stone v. Lickorish*, [1891] 2 Ch. 363; *Squire v. Pardoe* (1891), 66 L. T. 243.

873. ———.]—Where accounts are being taken in chambers before the chief clerk, either party has a right to have an item which has been found against him adjourned before the judge

without taking out a summons for that purpose.—*URTON v. BROWN* (1882), 20 Ch. D. 731; 47 L. T. 289; 30 W. R. 817, C. A.

Annotations:—*Mentl. Walker v. Bunkell* (1883), 52 L. J. Ch. 596; *Hewlings v. Graham* (1901), 70 L. J. Ch. 568.

874. ———.]—It is the absolute unqualified right of the suitor to adjourn a summons in chambers from the chief clerk to the judge, at his own risk as to costs. The suitor has a right to go to the judge at any time before the chief clerk's order becomes operative, & that is, before the order is drawn up & passed, or until something has been done under it.—*SCOTT v. HOMER* (1890), 60 L. J. Ch. 238; 63 L. T. 618.

Annotation:—*Reid. Re Thomas, Bartley v. Thomas*, [1911] 2 Ch. 389.

875. ———.]—*LLOYD'S BANK v. PRINCESS ROYAL COLLIERY CO., No. 868, ante.*

876. Vacation master.]—As to common matters which occur in the vacation, the vacation master acts, & is considered as acting, for the several masters in rotation, to whose offices such matters respectively may belong; & therefore, in the vacation, the production to the vacation master of the writ clerk's certificate is a sufficient compliance with the Ord. of Dec. 17, 1833, which requires its production to the master in rotation.—*SUFFIELD (LORD) v. BOND* (1846), 10 Beav. 146; 8 L. T. O. S. 290; 50 E. R. 538.

C. Taxing Masters.

877. Jurisdiction.—Taxation of costs of inquiry under Lands Clauses Consolidation Act, 1845 (c. 18).]—The chancery taxing masters, whose office is amalgamated with & who are themselves transferred to, the central office by virtue of the Rules pursuant to Supreme Ct. of Judicature (Officers) Act, 1879 (c. 78), which came into operation on Jan. 11, 1902, have now jurisdiction to tax the costs of an inquiry before a jury under the above Act.—*COVINGTON v. METROPOLITAN DISTRICT RY. CO.*, [1903] 1 K. B. 231; 72 L. J. K. B. 93; 87 L. T. 649; 51 W. R. 428; 19 T. L. R. 142; 47 Sol. Jo. 160, D. C.

Annotation:—*Reid. Re Cannings & Middlesex County Council* (1906), 5 L. G. R. 442.

SUB-SECT. 7.—JURISDICTION OF DISTRICT REGISTRARS.

See R. S. C., Ord. 35.

NOTE.—*Having regard to Ord. 35, r. 6, as amended by R. S. C., December, 1885, the names of cases decided before that rule have been given but their effect has not been set out.*

878. In administration actions.]—*IRLAM v. IRLAM* (1876), 2 Ch. D. 608; *Re SMITH, HUTCHINSON v. WARD* (1877), 6 Ch. D. 692; *Re JUDKINS' TRUSTS*, [1880] W. N. 198; *Re BOWEN, BENNETT v. BOWEN* (1882), 20 Ch. D. 538.

879. To appoint special examiner.—After removal of action to High Court.]—*DYSON v. PICKLES* (1879), 27 W. R. 376.

880. To settle deed.—Ordered to be settled by judge.]—Where a judgment directs that a deed shall be executed by deft. & settled by the judge in case the parties differ the district registrar in whose registry proceedings were commenced, other than the district registrars of the Liverpool & Manchester District Registries, has no power to settle such deed. Such a district registrar has no power to act as chief clerk unless the matter is sent to him by the judge (*KAY, J.*).—*HODGETTS v. BAKER* (1890), 34 Sol. Jo. 584.

881. To make order for taxation of costs.—On originating petition of course.—Registrar of Liver-

pool or Manchester District Registries.]—A registrar of the District Registry of Liverpool or Manchester has no jurisdiction to make a common order for taxation of a solr.'s bill of costs on an originating petition of course.—*Re PORRETT*, [1891] 2 Ch. 433; 60 L. J. Ch. 396; 64 L. T. 752; 39 W. R. 531; 7 T. L. R. 414, C. A.

Annotation:—*Consd. Re Stead*, [1910] 2 K. B. 713.

See, now, R. S. C., Ord. 35, r. 6 A.

882. — Non-contentious business.]—Application having been made, by originating summons in the Manchester District Registry, before the amendment in July, 1910, of Ord. 35, r. 6 A, to a judge of the K. B. Div. sitting at Manchester for an order referring a bill of costs of a solr. for non-contentious business to the district registrar for taxation:—*Held*: “the proper officer” to tax the bill within Solrs. Act, 1843 (c. 73), s. 37, was not the district registrar, but a master of the Supreme Ct.—*STEAD v. SMITH*, [1911] A. C. 688; 81 L. J. K. B. 68; 105 L. T. 120; 55 Sol. Jo. 616, H. L.

Taxation of costs in district registries generally.]

—*See SOLICITORS.*

883. To grant interpleader order.]—District registrars have no jurisdiction to grant an interpleader order, & the powers assigned to them by R. S. C., Ord. 35, r. 6, are not co-extensive with those of a master in chambers.—*HOOD & SONS v. YATES*, [1894] 1 Q. B. 240; 63 L. J. Q. B. 218; 70 L. T. 557; 42 W. R. 412, D. C.

Annotation:—*Consd. Townsend v. Kirkham*, [1898] 1 Q. B. 51.

See, now, R. S. C., Ord. 35, r. 5 (f).

884. To set aside garnishee order absolute.]—*BURRELL & SONS v. READ* (1894), 11 T. L. R. 36, C. A.

885. To set aside judgment—Signed in default of appearance—Entered for larger sum than due.]—Where, in an action proceeding in a district registry, pltf. has signed judgment in default of appearance, the district registrar has jurisdiction to set the judgment aside on the ground that it has been entered for a larger sum than was in fact due. The effect of R. S. C., Ord. 35, r. 6, is that in all matters, other than those in which the district registrar has exclusive jurisdiction under rr. 1–5, proceedings may be taken either before the district registrar or a master.—*TOWNEND v. KIRKHAM*, [1898] 1 Q. B. 51; 67 L. J. Q. B. 5; 77 L. T. 419; 46 W. R. 65; 42 Sol. Jo. 45, C. A.

Power of High Court over actions in district registries.]—*See PRACTICE & PROCEDURE.*

SUB-SECT. 8.—EXAMINERS.

Appointment & duties.]—*See EVIDENCE.*

SUB-SECT. 9.—THE OFFICIAL SOLICITOR.

886. Directions to act—Necessity for written instructions.]—Where the ct. refers a matter to the Official Solr., the instructions, if not inserted in the order, ought to be embodied in some document or, at least, be reduced into writing.

The functions of the Official Solr. with regard to instituting legal proceedings considered.—*Re CATON, VINCENT v. VATCHER* (1911), 55 Sol. Jo. 313.

Duties of—To act as next friend—Of infant.]—*See INFANTS & CHILDREN.*

—To act as guardian ad litem—Of infant.]—*See INFANTS & CHILDREN.*

— Of lunatic.]—*See LUNATICS & PERSONS OF UNSOUND MIND.*

887. — To act as solicitor—For party suing in formâ pauperis.]—It is no part of the duties of the Official Solr., as such, to act as solr. to a pltf. suing in *formâ pauperis* who does not suggest the name of any other solr. to be assigned to him. In the absence of special circumstances the Official Solr. will not be assigned as solr. to a pltf. suing in *formâ pauperis*.—*MOUTRIE v. MITCHELL*, [1901] 1 K. B. 596; 70 L. J. K. B. 401; 84 L. T. 187; 49 W. R. 271; 17 T. L. R. 258; *sub nom.* *MONTRIE v. MITCHELL*, 45 Sol. Jo. 275, C. A.

888. — To institute legal proceedings.]—*Re CATON, VINCENT v. VATCHER*, No. 886, *ante*.

Rights of—Acting as guardian ad litem.]—*See INFANTS & CHILDREN; LUNATICS & PERSONS OF UNSOUND MIND.*

SECT. 3.—THE COURT OF APPEAL.

SUB-SECT. 1.—CONSTITUTION.

See Jud. Acts, 1875 (c. 77), s. 4; 1876 (c. 59), s. 15; 1881 (c. 68), ss. 2–4; 1891 (c. 53), s. 1.

889. Judge—Disqualification of—Judge of division from which appeal pending—No part taken in decision.]—Under Jud. Act, 1875 (c. 77), s. 4, a judge of the Ct. of Appeal is not prevented from sitting as a judge on the hearing of an appeal merely because he is also a judge of the division from which the appeal is brought, but only if he has taken part in the decision appealed from.

In the above sect. “divisional court” does not mean “division.”—*FISHER v. VAL DE TRAVERS ASPHALTE CO.* (1875), 1 C. P. D. 259; 45 L. J. Q. B. 135; 24 W. R. 198, C. A.

Annotation:—*Reid. R. v. Ettridge*, [1909] 2 K. B. 24.

See, now, Jud. Act, 1881 (c. 68), s. 11.

890. Hearing before two judges—On filed consent of parties—Parties absent.]—Under Jud. Act, 1899 (c. 6), an appeal may be heard & determined by two judges of the Ct. of Appeal upon the filed consent of the respective counsel for the parties, notwithstanding that the parties themselves are not present.—*HAWORTH v. PILBROW* (1911), 28 T. L. R. 113, C. A.

SUB-SECT. 2.—JURISDICTION.

A. Original Jurisdiction.

(a) In General.

See Jud. Acts, 1873 (c. 66), ss. 4, 19, 23, 24; 1875 (c. 77), s. 22; 1894 (c. 16), s. 1 (1) (b), (5).

891. To hear original petition.]—The Ct. of Appeal has no jurisdiction to hear an original petition. Accordingly, permission was refused to transfer to the Ct. of Appeal a second petition for winding up a co. with a view to a hearing of such petition along with an appeal which had been brought against the dismissal of a previous petition for winding up the same co.—*Re DUNRAVEN ADARE COAL & IRON CO.* (1875), 33 L. T. 371; 24 W. R. 37; 1 Char. Pr. Cas. 2, C. A.

892. To hear second winding up petition—On appeal from order made on first petition.]—*Re DUNRAVEN ADARE COAL & IRON CO.*, No. 891, *ante*.

893. Order for protection of property—Receiver & manager.]—In an action for specific performance of an agreement to accept a lease of a farm, in which judgment had been given for deft., pltf. having appealed, the Ct. of Appeal, no previous application having been made to the Div. Ct. or a

Sect. 3.—The Court of Appeal: Sub-sect. 2, A. (a) & (b) & B. (a) i.]

judge, appointed plff. receiver & manager of the farm without security, on his undertaking to abide by any order which the ct. might make in the matter.—*HYDE v. WARDEN* (1876), 1 Ex. 11, 309; 25 W. R. 65; 3 Char. Pr. Cas. 397, C. A.

894. — Injunction.]—Where an action has been altogether dismissed by a Div. Ct. no order can be made under R. S. C., 1875, Ord. 58, r. 16, to stay proceedings pending an appeal, but the Ct. of Appeal will, in a proper case, grant an injunction to restrain any of the parties from parting with property till the hearing of the appeal. *WILSON v. CHURCH* (1879), 11 Ch. D. 576; 48 L. J. Ch. 690; 27 W. R. 843, C. A.

Annotations:—*Consd.* *Otto v. Lindford* (1881), 18 Ch. D. 394; *Cropper v. Smith* (1883), 24 Ch. D. 305.

895. — —.]—A decree was made in three suits for the administration of the personal estate of an intestate, directing the usual inquiry as to next of kin. A certificate was made finding five persons named F., to be the next of kin, & an order was made for distribution of the fund in ct. among them. S., who had not been a party to the proceedings, applied to stay distribution of the fund alleging herself to be next of kin. The V.-C. suspended the giving out of the order, & directed his chief clerk to inquire whether S. had made out a *prima facie* case, & the chief clerk finding that she had not, the V.-C. directed the order to be given out without prejudice to any independent proceeding by S. Four of the five shares were transferred to four of the persons found entitled; the fifth remained in ct. Two of the shares which had been transferred were sold out, & the proceeds received by the vendors. S. then commenced an action, & obtained an order granting an injunction to restrain any dealing with the three shares which had not been sold, & an inquiry who were the next of kin, & this order was subsequently directed to be taken as made in the three suits as well as in the action. The chief clerk again found the F. family to be the next of kin. The action & a summons to vary the certificate were heard before the V.-C., who dismissed the summons & action, but continued the injunction in the three causes until further order. S. appealed, & the Ct. of Appeal affirmed the decision of the V.-C. dismissing her bill, but S. being about to appeal to the House of Lords:—*Held*: as, if S. ultimately succeeded in the House of Lords, her success would be useless unless the fund was protected in the meantime, the injunction ought to be continued pending the appeal.—*POLINI v. GRAY, STUHLA v. FRECCIA* (1879), 12 Ch. D. 438; 41 L. T. 173; 28 W. R. 360, C. A.

896. Leave to file affidavit.—In Chancery action.]—*GLOVER v. GREENBANK ALKALI Co.* (1876), 2 Char. Pr. Cas. 9.

897. Order to set down action for trial.—In Chancery Division.]—An application to the Ct. of Appeal to order the registrar to set down an action for trial in the Ch. Div. was refused, the jurisdiction of the Ct. of Appeal being purely appellate & not of a superintending character.—*GARLING v. ROYDS* (1876), 2 Char. Pr. Cas. 12.

898. To stay proceedings.—Or execution.]—The Ct. of Appeal has no original jurisdiction in any case to order a stay of proceedings or of execution (*BRETT, L.J.*).—*GODDARD v. THOMPSON* (1878), 47 L. J. Q. B. 382; 38 L. T. 166; 26 W. R. 362, C. A.

Annotation:—*Mentd.* *Morton v. Palmer* (1882), 9 Q. B. D. 89.

899. To decide case in first instance.—At request

of judge in court below.]—The Ct. of Appeal has no jurisdiction to decide a case in the first instance at the request of the judge below.—*BROWN v. COLLINS* (1883), 25 Ch. D. 56; 49 L. T. 329, C. A.

Annotation:—*Mentd.* *Re McGrath*, [1892] 2 Ch. 496.

900. Application to strike solicitor off rolls.]—On the hearing of an appeal the attention of the Ct. of Appeal was called to the evidence given by a solr. in the ct. below, from which it appeared he had been guilty of gross misconduct in his character of solr. with regard to a mtg. on which a question arose in the action. The Ct. of Appeal directed the Official Solr. to take proceedings against him. The Official Solr. moved the ct. for an order calling on the solr. to explain his conduct or that he should be struck off the roll. The solr. took no notice of the application:—*Held*: the ct. had jurisdiction to entertain the application, but, having regard to the circumstances of the case, & that the solr. had not taken out a certificate for several years, the ct. would not order him to be struck off the roll, or suspend him, but would grant an injunction restraining him from renewing his certificate without the leave of the ct.—*Re WHITEHEAD* (1885), 28 Ch. D. 614; 54 L. J. Ch. 796; 52 L. T. 703; 33 W. R. 601, C. A.

See, now, Solicitors Act, 1919 (c. 56).

901. Leave to bring action in nature of bill of review.]—The High Ct. has power to give leave to bring an action in the nature of a bill of review.

Where the judgment sought to be varied is a judgment of the Ct. of Appeal, the application for leave should be made to the High Ct., not to the Ct. of Appeal.—*FALCKE v. SCOTTISH IMPERIAL INSURANCE Co.* (1887), 57 L. T. 39; 35 W. R. 791.

Annotations:—*Consd.* *Bright v. Sellar*, [1904] 1 K. B. 6. *Refd.* *Re Scott & Alvarez's Contract*, *Scott v. Alvarez*, [1895] 1 Ch. 596.

902. Rule nisi for habeas corpus.—After refusal by Divisional Court.]—Where a Div. Ct. has refused to grant a rule nisi for a *habeas corpus* in the case of a prisoner who has been committed with a view to extradition, the Ct. of Appeal has no original jurisdiction to grant such a rule.—*Ex p. LE GROS* (1914), 78 J. P. Jo. 63; 30 T. L. R. 249, C. A.

903. — —.]—An appeal will not lie to the Ct. of Appeal against a refusal of a Div. Ct. to issue a writ of *habeas corpus* in a case of a prisoner committed under the Fugitive Offenders Act, 1881 (c. 69).

An order nisi for a *habeas corpus* was obtained in the K. B. Div. on the application of a person in custody under the above Act, but was afterwards discharged. An application was subsequently made to the Ct. of Appeal to exercise the powers given by s. 10 of the Act, as having original jurisdiction in that behalf under the Act concurrently with the High Ct. A preliminary objection was taken to the hearing of the application on the ground that the matter had been previously adjudicated upon by the K. B. Div., & was therefore *res judicata*:—*Held*: inasmuch as the only matter adjudicated upon by the order of the K. B. as drawn up, was that the order nisi for a *habeas corpus* should be discharged, the matter of the application to the Ct. of Appeal was not *res judicata*, & the Ct. of Appeal had original jurisdiction to entertain the application.—*R. v. BRISTON PRISON (GOVERNOR), Ex p. SAVARKAR*, [1910] 2 K. B. 1056; 80 L. J. K. B. 57; 103 L. T. 473; 26 T. L. R. 561; 54 Sol. Jo. 635, C. A.

Annotations:—*Refd.* *Ex p. Le Gros* (1914), 30 T. L. R. 249; *R. v. Garrett, Ex p. Sharf*, [1917] 2 K. B. 99.

See, further, CROWN PRACTICE, pp. 249 et seq., post; EXTRADITION & FUGITIVE OFFENDERS.

To give leave to appeal in formâ pauperis.]—See Sub-sect. 2, A. (b), *post*.

(b) *Leave to appeal in formâ pauperis.*

See R. S. C., Ord. 16, r. 31 K.

904. Jurisdiction of court to grant.]—The Ct. of Appeal has inherent jurisdiction to grant an *ex p.* application for leave to appeal in formâ pauperis.

Application for leave to appeal in formâ pauperis to the Ct. of Appeal by a party who has not sued or defended in formâ pauperis in the ct. below, must be made *ex p.* to the Ct. of Appeal.

Such an application is not by way of appeal but is an original motion (LORD ESILER, M.R.).—*Ex p.* GOLDBERG, [1893] 1 Q. B. 417; 62 L. J. Q. B. 127; 68 L. T. 142; 41 W. R. 210; 9 T. L. R. 162; 37 Sol. Jo. 174; 4 R. 232, C. A.

*Annotations:—*Consd. Merriman v. Geach, [1913] 1 K. B. 37. *Reid.* Clements v. L. & N. W. Ry. (No. 1) (1894), 9 R. 223; Handford v. Clarke (1906), 76 L. J. K. B. 76.

905. Conditions—Special leave—Order obtained in lower court.]—When a party has obtained the common order to sue in formâ pauperis at any stage of the suit, it will carry him through all subsequent stages; & no special order is required to enable him to appeal without payment of a deposit.—DRENNAN v. ANDREW (1866), 1 Ch. App. 300; 14 L. T. 39; 14 W. R. 444, L. C.

*Annotations:—*Fold. Biggs v. Dagnall, [1895] 1 Q. B. 207. *Reid.* Smith v. Smith & Rutherford, [1920] P. 206.

906. ———.]—A party who has sued or defended in formâ pauperis in the ct. below is entitled to appeal as a pauper without either giving security for costs or obtaining special leave so to appeal.—BIGGS v. DAGNALL, [1895] 1 Q. B. 207; 64 L. J. Q. B. 221; 15 R. 252, D. C.

*Annotation:—*Reid. Smith v. Smith & Rutherford, [1920] P. 206.

907. ——— Certificate of counsel—In case of respondent.]—Resp. to an appeal will be allowed to appear in formâ pauperis to resist the appeal without producing an opinion of counsel.—HANDFORD v. CLARKE (GEORGE), LTD., [1907] 1 K. B. 181; 76 L. J. K. B. 76; 96 L. T. 175; 23 T. L. R. 127; 51 Sol. Jo. 100; 9 W. C. C. 136, C. A.

*Annotation:—*Reid. Merriman v. Geach, [1913] 1 K. B. 37

——— **On appeal to Privy Council.]—See** Nos. 755–758, *ante*.

908. What rules apply—Party not appearing as pauper in lower court.]—Where a party, who has not sued or defended as a pauper in the ct. below, applies for leave to appeal in formâ pauperis, the ct. will follow by analogy R. S. C., Ord. 16, rr. 22, 23, 24, & not the old practice as to such appeals.—*Re* ROBERTS, KIFF v. ROBERTS (1886), 33 Ch. D. 265; 35 W. R. 176, C. A.

*Annotations:—*Fold. *Ex p.* Goldberg, [1893] 1 Q. B. 417. *Reid.* Biggs v. Dagnall, [1895] 1 Q. B. 207.

909. ———.]—*Ex p.* GOLDBERG, No. 904, *ante*.

910. How application made—By party not appearing as pauper in lower court.]—*Ex p.* GOLDBERG, No. 904, *ante*.

911. Effect of leave—On order to give security for costs.]—An order in the usual form requiring an applt. to give security for the costs of the appeal on the ground of poverty, & containing a stay of proceedings until security is given, ceases to operate if, within the time limited for giving security, applt. obtains an order for leave to prosecute the appeal in formâ pauperis.—WILLÉ v. ST. JOHN, [1910] 1 Ch. 701; 79 L. J. Ch. 409; 102 L. T. 617; 26 T. L. R. 405; 54 Sol. Jo. 457, C. A.

B. Appellate Jurisdiction.

(a) *When Appeal lies.*

i. *In General.*

Admiralty.]—See ADMIRALTY. Vol. I., pp. 231, 235, Nos. 1608–1612.

Attachment or committal.]—See CONTEMPT OF COURT, ATTACHMENT & COMMITTAL, p. 81, *ante*.

Bankruptcy.]—See BANKRUPTCY & INSOLVENCY, Vol. IV., pp. 524, 525, 527, Nos. 4791, 1793, 4791, 4818; Vol. V., pp. 1012, 1045, No. 8510, 8531.

Chancery Division.]—See Sub-sect. 2, B. (a) iii., *post*.

912. Commercial list—Order transferring case to.]—An appeal will lie to the Ct. of Appeal against an order for entry of a cause in the commercial list if it be not a commercial cause.—SEA INSURANCE Co. v. CARR, [1901] 1 Q. B. 7; 69 L. J. Q. B. 954; 83 L. T. 517; 49 W. R. 55; 17 T. L. R. 6; 45 Sol. Jo. 29; 9 Asp. M. L. C. 138; 6 Com. Cas. 11, C. A.

Costs.]—See Sub-sect. 2, B. (a) v., *post*.

Criminal causes or matters.]—See CONTEMPT OF COURT, ATTACHMENT & COMMITTAL, p. 81, *ante*; CRIMINAL LAW & PROCEDURE; CROWN PRACTICE pp. 270, 347, 396, 155, 476, Nos. 795–797, 1735 1739, 2102, 3287, 3573–3577, *post*; MAGISTRATES.

Custody of infant—Custody of Infants Act, 1873 (c. 12), s. 1.]—See INFANTS & CHILDREN.

Discretion of judge.]—See PRACTICE & PROCEDURE.

Divisional Court.]—See Sub-sect. 2, B. (a) ii., *post*.

Divorce matters.]—See HUSBAND & WIFE.

Documents submitted to judge—By consent of parties—Decision on summons for production.]—See ARBITRATION, Vol. II., p. 317, No. 41.

913. Election to take order—Effect of.]—Appeal from order giving leave to amend on terms dismissed on the ground that ptfs., having elected to amend instead of having their action dismissed at the trial, there was no order against which they could appeal.—BOWDEN'S (E. M.) PATENTS SYNDICATE, LTD. v. SMITH (HERBERT) & Co., [1904] 2 Ch. 122; 73 L. J. Ch. 776, C. A.

Inferior courts.]—See Sub-sect. 2, B. (a) iv. *post*.

914. Information by Attorney-General for penalties.]—(1) An information at the suit of the A.-G. to recover penalties under Parliamentary Oaths Act, 1866 (c. 12), s. 5, from a member of Parliament for voting without having taken the oath of allegiance required by that statute, as amended by Promissory Oaths Act, 1868 (c. 72), is not a criminal cause or matter within the meaning of Jud. Act, 1873 (c. 66), s. 17, & an appeal may be brought from any order or judgment therein of the High Ct. to the Ct. of Appeal.

(2) An appeal lies to the Ct. of Appeal from any order or judgment made or given by the Q. B. Div. either during, or afterwards with respect to, a trial at bar of a civil proceeding, & whether or not the appeal is brought from a decision upon a motion for a new trial on the ground of misdirection or wrongful reception of evidence, but the appeal must be brought on by notice of motion, an *ex p.* application for a rule nisi to the Ct. of Appeal being irregular.

(3) *Semble*: even if the information could be regarded as a criminal proceeding, nevertheless an appeal would lie, for by Jud. Act, 1873 (c. 66), s. 47, the right of appeal is taken away only in the case of indictments, of criminal informations for indictable misdemeanours filed in the Q. B. Div. & of criminal proceedings before justices.—A.-G. v. BRADLAUGH (1885), 14 Q. B. D. 667; 54

Sect. 3.—The Court of Appeal: Sub-sect. 2, B. (a) i., ii., iii., iv., v. & vi., (b). Sect. 4.]

L. J. Q. B. 205; 52 L. T. 589; 49 J. P. 500; 33 W. R. 673, C. A.

Annotations:—As to (1) Refd. R. v. Hausmann (1909), 73 J. P. 516; R. Clifford & O'Sullivan, [1921] 2 A. C. 570.

Injunction.]—See INJUNCTION.

915. Assessment of damages on inquiry before under-sheriff.]—Where there has been a trial before the under-sheriff & a jury for the assessment of damages in an action in the High Ct., an application for a new trial must be made, under Jud. Act, 1890 (c. 44), s. 1 to the Ct. of Appeal, & not to a Div. Ct.—*RADAM'S (WILLIAM) MICROBE KILLER CO. v. LEATHER*, [1892] 1 Q. B. 85; 61 L. J. Q. B. 38; 65 L. T. 604; 40 W. R. 83; 8 T. L. R. 68; 36 Sol. Jo. 59, C. A.

Annotations:—Apld. Dunlop Pneumatic Tyre Co. v. New Garage & Motor Co. (1913), 108 L. T. 361. Refd. O'Driscoll v. Manchester Insee. Committee, [1915] 3 K. B. 499; Smythe v. Wiles, [1921] 2 K. B. 66.

Interlocutory judgments & orders.]—See PRACTICE & PROCEDURE.

Interpleader proceedings.]—See INTERPLEADER.

Lunacy matters.]—See LUNATICS & PERSONS OF UNSOUND MIND.

Midwives Act, 1902 (c. 17), s. 4.]—See MEDICINE & PHARMACY.

Minutes of judgments.]—See JUDGMENTS & ORDERS.

Palatine Court of Durham.]—See Part XXI., Sect. 3, post.

Palatine Court of Lancaster.]—See Part XXI., Sect. 2, sub-sect. 3, post.

Matters of practice & procedure.]—See PRACTICE & PROCEDURE.

Probate.]—See EXECUTORS & ADMINISTRATORS.

Railway Commissioners.]—See RAILWAYS & CANALS.

Registration appeals—Under Representation of the People Act, 1918 (c. 64).]—See ELECTIONS.

Solicitor—Application to strike off rolls.]—See SOLICITORS.

916. Stamp—Decision as to sufficiency of.]—Where a judge, trying an action without a jury, rules that the stamp upon any document is sufficient, or that the document does not require a stamp, the decision is final, & no appeal lies to the Ct. of Appeal by way of application for a nonsuit, or to enter judgment, or for a new trial.—*BLEWITT v. TRITON*, [1892] 2 Q. B. 327; 61 L. J. Q. B. 773; 67 L. T. 72; 41 W. R. 36, C. A.

Annotations:—Apld. Mander v. Ridgway (1898), 67 L. J. Q. B. 335; Lowe v. Dorling (1905), 93 L. T. 393.

917. Trial at bar in King's Bench Division.]—A.-G. v. BRADLAUGH, No. 914, ante.

Winding-up order.]—See COMPANIES.

Workmen's Compensation Act, 1906 (c. 58).]—See MASTER & SERVANT.

ii. From King's Bench Division.

918. Without leave—Exercise of original common law jurisdiction—Case stated by quarter sessions.]—Where the Q. B. D. in the exercise of its original common law jurisdiction affirms or quashes an order of sessions, an appeal lies to the Ct. of Appeal although no leave be given.—*R. v. SAVIN* (1880), 6 Q. B. D. 309; 29 W. R. 638, C. A.
Annotation:—Apld. Illingworth v. Bulmer East Highway Board (1884), 53 L. J. M. C. 80.

919. ———.]—An appeal lies without leave from a judgment of the Q. B. D. on a special case stated by quarter sessions pursuant to Highway Act, 1835 (c. 50), s. 108, as the Q. B. D., in giving judgment on such a case, exercises its own original common law jurisdiction, & not any new

statutory appellate jurisdiction.—*ILLINGWORTH v. BULMER EAST HIGHWAY BOARD* (1884), 53 L. J. M. C. 65, C. A.

Refusal to order county court judge to hear action.]—See COUNTY COURTS, Vol. XIII., p. 503, No. 536.

With special leave—Decision on appeal from county court.]—See COUNTY COURTS, Vol. XIII., p. 534, Nos. 852 851.

Refusal to give leave to appeal—From judgment of county court.]—See COUNTY COURTS, Vol. XIII., p. 534, Nos. 855-858.

920. Jurisdiction not purely consultative—Decision as to validity of parochial rates.]—The jurisdiction of the Q. B. upon questions relating to the validity of parochial rates is not purely consultative, but judicial, & the decisions of that ct. upon such matters are therefore open to appeal.

—*WALSALL OVERSEERS v. LONDON & NORTH WESTERN RY. CO.* (1878), 4 App. Cas. 30; 48 L. J. M. C. 65; 39 L. T. 453; 43 J. P. 108; 27 W. R. 189, H. L.; *reversg.* S. C. *sub nom.* R. v. WALSALL OVERSEERS, 3 Q. B. D. 457, C. A.

Annotations:—Distd. R. v. Swindon New Town L. B. (1880), 49 L. J. Q. B. 522. *Apld.* *Shubrook v. Tufnell* (1882), 30 W. R. 740; *Illingworth v. Bulmer East Highway Board* (1884), 53 L. J. M. C. 60. *Consd.* *Kydd v. Liverpool Watch Committee*, [1907] 2 K. B. 591. *Refd.* *R. v. Bridgnorth Grds.* (1883), 11 Q. B. D. 314; *Ex p. Kent County Council & Dover Council*, *Ex p. Kent County Council & Sandwich Council*, [1891] 1 Q. B. 725; *Re Knight & the Tabernacle Permanent Bldg. Soc.* (1892), 41 W. R. 35; *Lodge v. Huddersfield Corp.* (1898), 62 J. P. 515; *R. v. Nat. Bell Liquors*, [1922] 2 A. C. 128. *Mentd.* *Peterborough Corp. v. Wiltshorpe Parish & Stamford Union Assmt. Com.* (1883), 53 L. J. M. C. 33; *Chertsey Union v. Holborn Union* (1885), 50 J. P. 36; *Holborn Grds. v. Chertsey Grds.* (1885), 15 Q. B. D. 76; *Cox v. Hakes* (1890), 15 App. Cas. 506; *Barnardo v. Ford, Gossage's Case*, [1892] A. C. 326; *R. v. Southampton Licensing J.J.*, *Ex p. Cardy*, [1906] 1 K. B. 446; *Re Carpenter & Bristol Corp.* (1907), 71 J. P. 417; *Re Jude's Musical Compositions*, [1907] 1 Ch. 651.

921. ——— Decision on case stated by arbitrator.]—An arbitrator to whom an action had been referred stated a case for the opinion of the ct. asking whether, upon the facts stated, plt. had a cause of action; if the ct. was of opinion in the affirmative, the case to go back to the arbitrator, but if the ct. was of opinion in the negative, judgment was to be entered for deft. with costs. A Div. Ct. answered the question in the affirmative. On appeal from such decision:—*Held*: the opinion expressed by the ct. was a judicial act from which an appeal would lie.—*SHUBROOK v. TUFNELL* (1882), 9 Q. B. D. 621; 46 L. T. 749; 30 W. R. 740, C. A.

Annotations:—Mentd. *Bozson v. Altrincham U. C.* (1903), 72 L. J. K. B. 271; *Isaacs v. Salbstein*, [1916] 2 K. B. 139; *Cogstad v. Newsum*, [1921] 2 A. C. 528.

See ARBITRATION, Vol. II., pp. 459-462.

922. Jurisdiction purely consultative—Decision on question submitted under Local Government Act, 1888 (c. 41), s. 29.]—The jurisdiction of the High Ct. of Justice upon questions submitted to it under the above Act is consultative only, & not judicial, & no appeal lies from its decision to the Ct. of Appeal.—*Ex p. KENT COUNTY COUNCIL & DOVER COUNCIL*, *Ex p. KENT COUNTY COUNCIL & SANDWICH COUNCIL*, [1891] 1 Q. B. 725; 65 L. T. 213; 55 J. P. 647; 39 W. R. 465; 7 T. L. R. 487; *sub nom.* *Re DOVER COUNCIL & KENT COUNTY COUNCIL*, *Ex p. DOVER COUNCIL*, *Re KENT COUNTY COUNCIL & SANDWICH COUNCIL*, *Ex p. KENT COUNTY COUNCIL*, 60 L. J. Q. B. 435, C. A.

Annotations:—Refd. *Re Knight & Tabernacle Permanent Bldg. Soc.*, [1892] 2 Q. B. 613. *Mentd.* *Re Herefordshire County Council & Leominster Town Council* (1894), 15 R. 77.

Decision on special case—Raising questions of fact only.]—See ARBITRATION, Vol. II., p. 317, No. 40.

Proceedings on Crown side of King's Bench Division.]—See CROWN PRACTICE, pp. 270, 346, 347, 395, 396, 455, 476, 477, Nos. 792-797, 1730-1740, 2397, 2399-2402, 3287, 3288, 3573-3581, *post*.

iii. *From Chancery Division.*

923. General rule.]—Re ST. NAZAIRE CO., No. 809, *ante*.

924. Order directing trial of issue before jury.]—An appeal lies from an order of a judge of the Ct. of Ch. directing an issue to be tried before a jury, the Ct. of Appeal being entitled to see that a case for the exercise of the judge's discretion has been raised by the evidence, but if satisfied that there is a conflict of evidence, the Ct. of Appeal will not interfere with the discretion of the judge in directing an issue.—WILLIAMS v. GUEST (1875), 10 Ch. App. 467; 44 L. J. Ch. 559; 33 L. T. 291; 23 W. R. 822, L. J.J.

*Annotation:—*Reid. Jenkins v. Morris (1880), 14 Ch. D. 674.

iv. *From Inferior Courts.*

See Jud. Act, 1873 (c. 66), s. 45.

925. Mayor's Court, London—Error apparent on face of proceedings—Under Judicature Act, 1873, s. 18 (4).—The Ct. of Appeal from inferior cts. has no jurisdiction to hear & determine questions of law arising upon the records of the Mayor's Ct., London; the proper tribunal to entertain them is the Ct. of Appeal, under the above Act.—LE BLANCH v. REUTER'S TELEGRAM CO. (1876), 1 Ex. D. 408; 25 W. R. 115.

*Annotation:—*Reid. Darlow v. Shuttleworth, [1902] 1 K. B. 721.

926. ———.]—PRYOR v. CITY OFFICES CO., No. 66, *ante*.

Liverpool Court of Passage.]—See Part XXIII., Sect. 3, sub-sect. 5, *post*.

County court.]—See COUNTY COURTS, Vol. XIII., pp. 533, 534.

See, also, Nos. 811-814, *ante*.

v. *From Orders as to Costs.*

Generally.]—See Judicature Act, 1873 (c. 66), s. 49; PRACTICE & PROCEDURE.

In interpleader proceedings.]—See INTERPLEADER.

Costs of mortgagors & mortgagees.]—See MORTGAGE.

To House of Lords.]—See PARLIAMENT.

To Privy Council.]—See Part X., Sect. 2, sub-sect. 7, *ante*.

vi. *Effect of Agreement not to appeal.*

927. General rule.]—A cause & other matters in difference were referred by consent, by order of *Nisi Prius*. The order contained no clause relating to the statement of a special case by the arbitrator, but it provided that the parties should not bring error against him or each other, respecting the matters referred. The arbitrator, at the request of the parties, stated his award, as to the cause only, in the form of a special case for the opinion of the ct. of Q. B., & the ct. gave judgment thereon for deft.:—*Held*: pltf. was precluded by express agreement from bringing error.—GUMM v. FOWLER (1860), 2 E. & E. 890; 29 L. J. Q. B. 189; 2 L. T. 282; 6 Jur. N. S. 1093; 8 W. R. 436; 121 E. R. 332.

*Annotations:—*Consd. Jones v. Victoria Graving Dock Co. (1877), 2 Q. B. D. 314. *Mentd.* Courtauld v. Legh (1869), L. R. 4 Exch. 187.

928. ———.]—By an order of reference made by consent, & before the coming into operation of Jud. Acts, it was ordered that neither pltf's. nor defts. should bring any writ of error against each other concerning the matters referred. The

arbitrator made an award dependent on the opinion of the ct. upon a special case stated by him. The ct. gave judgment for pltf's. Defts. appealed:—*Held*: no appeal could be brought.—JONES v. VICTORIA GRAVING DOCK CO. (1877), 2 Q. B. D. 314; 36 L. T. 347; 25 W. R. 501, C. A.

*Annotations:—**Mentd.* Re Great Northern Salt & Chemical Works, *Ex p.* Fenwick (1891), 36 Sol. Jo. 42; Evans v. Hoare, [1892] 1 Q. B. 593; Re Queensland Land & Coal Co., Davis v. Martin (1894), 63 L. J. Ch. 810; Griffiths Cycle Corp'n. v. Humber, [1899] 2 Q. B. 414; Daniels v. Trefusis, [1914] 1 Ch. 788.

Compare No. 338, *ante*.

929. Agreement not embodied in order of dismissal.]—A claim under a winding-up having been refused by the Master of the Rolls, counsel for the liquidator asked counsel for the claimant whether he intended to carry the case further, & on being informed that he did not, said that he should not ask for costs. An order was drawn up dismissing the claim without costs & not containing any undertaking not to appeal:—*Held*: as no undertaking not to appeal was embodied in the order, an appeal would lie.—Re HULL & COUNTY BANK, TROTTER'S CLAIM (1879), 13 Ch. D. 261; 41 L. T. 537; 28 W. R. 125, C. A.

*Annotation:—*Reid. Harvey v. Croydon Union R. S. A. (1883), 53 L. J. Ch. 335.

930. Whether binding on infant.]—Pltf., an infant, brought an action by her next friend in the county ct. to recover damages for personal injuries sustained by her through the alleged negligence of deft. At the trial a judgment of nonsuit was pronounced, & it was suggested that if there was no appeal deft. would not ask for costs. Pltf.'s counsel agreed to this, & the judgment was entered without costs. Pltf. was without means. On an application on her behalf for a new trial:—*Held*: the agreement was of no benefit to the infant, & was not binding on her.—RHODES v. SWITHEBANK (1889), 22 Q. B. D. 577; 58 L. J. Q. B. 287; 60 L. T. 856; 37 W. R. 457; 5 T. L. R. 352, C. A.

See, generally, INFANTS & CHILDREN.

Power of counsel to compromise.]—See BARRISTERS, Vol. III., pp. 339 *et seq.*

(b) *Power of Court on Appeal.*

In general.]—See PRACTICE & PROCEDURE.

Admiralty appeals.]—See ADMIRALTY, Vol. I., pp. 238 *et seq.*

SECT. 4.—RULES AND PROCEDURE.

931. Rules of Supreme Court—Effect of—Confer no new jurisdiction.]—Re SMITH, No. 790, *ante*.

932. ———.]—HARRIS v. FRANCONIA (OWNERS), No. 37, *ante*.

933. ———.]—SWINDELL v. BULKELEY, No. 795, *ante*.

934. ———.]—BRITISH SOUTH AFRICA CO. v. COMPANHIA DE MOÇAMBIQUE, No. 798, *ante*.

935. ———.]—The rules under Jud. Acts are rules of procedure only, not intended to affect, & not affecting, the rights of parties (BYRNE, J.).—DUDER v. AMSTERDAMSCH TRUSTEES KANTOOR, [1902] 2 Ch. 132; 71 L. J. Ch. 618; 87 L. T. 22; 50 W. R. 551.

*Annotation:—**Mentd.* Bank of Africa v. Cohen, [1909] 2 Ch. 129.

936. ———.]—Whether earlier statutes as to costs repealed.]—PARSONS v. TINLING, No. 783, *ante*.

937. ———.]—GARNETT v. BRADLEY, No. 784, *ante*.

938. ———.]—R. S. C., Ord. 65, r. 1 does not apply to costs which are given by stat.

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as a matter of right. In an action brought for anything done in pursuance of 8 & 9 Vict. c. 100, a successful deft. is entitled to double costs as a matter of right.—*HASKER v. WOOD* (1885), 54 L. J. Q. B. 419; 33 W. R. 697; 1 T. L. R. 495, C. A.

—*Apld.* *Reeve v. Gibson*, [1891] 1 Q. B. 652. —*Distd.* *Bostock v. Ramsey* U. C., [1900] 2 Q. B. 616.

939. — — — — —.]—In an action by landlord against tenant for rent, deft. brought a counterclaim against pltf. & third parties for illegal distress. The judge, before whom the case was tried without a jury, gave judgment for pltf. on the claim & the counterclaim, but for deft. against the third parties for £2 5s. "with such costs as deft. would be entitled to by law":—*Held*: as the case had been tried without a jury, the costs were by R. S. C., Ord. 65, r. 1, in the discretion of the judge, & there having been no exercise of such discretion in favour of deft. as against the third parties, deft. was not "entitled by law" to costs.

R. S. C., Ord. 65, r. 1 in effect repeals all the earlier statutes as to costs inconsistent with it (*HUDDLESTON, B.*).—*LEWIN v. TRIMMING, TRIMMING v. LEWIN & CHADWICK & SONS* (1888), 21 Q. B. D. 230; 59 L. T. 511; 37 W. R. 16.

—*Annotations*:—*Mentd.* *Amon v. Bobbett* (1889), 58 L. J. Q. B. 219; *Ritter v. Godfrey*, [1920] 2 K. B. 47.

940. — — — — —.]—*Held*: the Rules of the Supreme Court did not operate to repeal the provisions of special statutes giving special costs in particular cases.—*REEVE v. GIBSON*, [1891] 1 Q. B. 652; 60 L. J. Q. B. 451; 64 L. T. 141; 39 W. R. 420; 7 T. L. R. 285, C. A.

— — — — —.]—*See, also*, ADMIRALTY, Vol. I., p. 213, Nos. 1360, 1361, COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 254, Nos. 1597, 1599, 1601–1603.

941. — — — — —.]—On practice of Admiralty Court —Where inconsistent with rules.]—Pltfs., the owners, masters & crews of four steam tugs, issued a writ of summons *in rem* in the Admlty. Div. claiming reward for alleged salvage services rendered to a ship, her cargo & freight. The owners of the ship & her cargo appeared as defts., under protest, & moved to set aside the writ, or, in the alternative, to strike out all pltfs., except one, on the ground that their causes of action were separate & distinct:—*Held*: the motion must be dismissed, the practice in Admlty. as to parties to the suit, & joinder of causes of action, not being affected by the provision of R. S. C., Ord. 16, r. 1 & Ord. 18, r. 1, as interpreted by *Smurthwaite v. Hannay*, [1894] A. C. 494.

1875 Act, s. 21, & also R. S. C., Ord. 72, r. 2, leave untouched the practice of this Ct. in those respects in which it is inconsistent with the Rules made under the Jud. Acts (*GORELL BARNES, J.*).—*THE MARÉCHAL SUCHET*, [1896] P. 233; 65 L. J. P. 94; 74 L. T. 789; 45 W. R. 141; 12 T. L. R. 510; 8 Asp. M. L. C. 158.

—*Annotations*:—*Refd.* *The Creteforest*, [1920] P. 111; *Marlborough Hill Ship v. Cowan*, [1921] 1 A. C. 444.

— — — — —.]—*See, also*, ADMIRALTY, Vol. I., pp. 185, 195, 213, Nos. 979, 1102, 1360, 1361.

Specific rules.—*See* particular Titles *passim*.

See, further, STATUTES.

942. — — — — —.]—Construction of—General rule.]—We cannot act upon intention, either in the case of a statute or in the case of a rule; we must have the intention carried into effect; & if the intention is stated to have been such that the terms either

of the rule or of the statute contravene it or are in any way inconsistent with it, we cannot have regard to that intention; we can only say, either in the case of the judges or in the case of the Legislature, what the judges or the Legislature have actually done. It is manifestly impossible to enter upon such an inquiry without confusion & serious risk of defeating the ends of justice. In the case of the judges, it may be more easy to find out exactly what they felt & wished than in the case of the Legislature, but still the difficulty would be enormous. We cannot act upon intention (*LORD O'HAGAN*).

I agree in what the noble & learned Lord (*Lord O'Hagan*) has just now said, that these rules which are contained in the sched. to the Act are to be construed so as to discover the intention expressed in the rules, & that it is not a legitimate ground of construction for the person or persons who drew the rules to say, "We wished & meant to express a particular intention." I do not think that that would be a legitimate ground, in fact it has long been established that that is not a legitimate ground, upon which to construe any instrument in writing. But I think that the way in which we ought to construe these written instruments is by ascertaining what is the intention expressed by the words used; we are to consider what was the object which those who used the expressions had in view, & what was the subject-matter they were speaking about, & then to say, construing the words used with reference to such a subject-matter & to such an object, what is the intention expressed (*LORD BLACKBURN*).—*DANFORD v. MCANULTY* (1883), 8 App. Cas. 456; 52 L. J. Q. B. 652; 49 L. T. 207; 31 W. R. 817, H. L.

943. — — — — —.]—R. S. C., Ord. 50, r. 8, must be construed according to the ordinary meaning of the English language unless there is something in the context which shows that it ought not to be so construed. The words have no idiomatic meaning, & they must therefore be construed according to their grammatical meaning (*LORD ESHER, M.R.*).—*GEBRÜDER NAF v. PLOTON* (1890), 25 Q. B. D. 13; 59 L. J. Q. B. 371; 63 L. T. 328; 38 W. R. 566, C. A.

Specific rules.—*See* particular Titles *passim*.

944. — — — — —.]—Whether having force of statutes.]—*Seemble*: the rules of Ct. are to be regarded as having the force of a statute under Jud. Act, 1875 (c. 77), s. 16, & the similar sects. of later Acts.—*SMYTHE v. WILES*, [1921] 2 K. B. 66; 90 L. J. K. B. 1278; 124 L. T. 688; 37 T. L. R. 256; 65 Sol. Jo. 258, C. A.

945. — — — — —.]—Forms in—Whether binding.]—Although the forms given in Jud. Acts are not absolutely binding they are still of assistance as illustrating the meaning of the Act (*THE SINGER, L.J.*).—*TURQUAND & CAPITAL & COUNTIES BANK v. FEARON* (1879), 48 L. J. Q. B. 703; 40 L. T. 543, C. A.

—*Annotations*:—*Mentd.* *Val de Travers Asphalte Paving Co. v. London Tram. Co.* (1879), 48 L. J. Q. B. 312; *Tryon v. National Provident Institution* (1886), 16 Q. B. D. 678.

946. — — — — —.]—A statement of claim in a salvage action was drawn in R. S. C., Form No. 6 of Appendix C. On motion by defts. under R. S. C., Ord. 19, r. 7, for a further & better statement of claim or particulars:—*Held*: pltfs. must deliver a fuller statement of claim, & in salvage actions a fuller form than that given in Appendix C., Form No. 6, should generally be followed.

The forms appended to the Rules are only to be taken as specimens of the character of the pleadings, & are not to be slavishly adhered to, though

the pleader must endeavour to state the case in as succinct a form as possible (SIR JAMES HANNEN, P.).—*THE ISIS* (1883), 8 P. D. 227; 53 L. J. P. 14; 49 L. T. 444; 32 W. R. 171; 5 Asp. M. L. C. 156.

947. ——— Form demurrable.]—A great many forms in the Orders are so short that if they were looked at through the old spectacles they would be demurrable (LINDLEY, C.J.).—*DADSWELL v. JACOBS* (1887), 34 Ch. D. 278; 56 L. J. Ch. 233; 55 L. T. 857; 35 W. R. 261, C. A. *Annotation* :—*Mentd.* *Bevan v. Webb*, [1901] 2 Ch. 59.

948. ——— Form defective.]—*WETHERED v. COX*, [1888] W. N. 165.

See, generally, PLEADING.

949. ——— Annulment of—Effect of.]—In an action founded on a tort committed within the jurisdiction, pltf. obtained leave to issue a writ for service out of the jurisdiction under R. S. C. of Nov. 1893. Shortly afterwards the rule under which this was done was annulled by a new rule, "pltf. subsequently obtained an order for sub- the order to made, must stand, but after the rule had been annulled leave to effect substituted service ought not to have been granted.

What was the effect of annulling the rule. It was only necessary to say this, that by Jud. Act,

1875 (c. 77), ss. 17, 25, a rule might be annulled, & the rule thenceforward became void & of no effect, but without prejudice to the validity of any proceedings which might in the meantime have been taken under it. Therefore the annulment did not affect the order for the issue of the writ for service out of the jurisdiction, & the validity of that order could not be questioned (LORD ESHER, M.R.).—*DE BERNALES v. BENNETT* (1894), 10 T. L. R. 419, C. A.

Annotation :—*Mentd.* *Jay v. Budd* (1897), 46 W. R. 34.

County court rules.]—*See* COUNTY COURTS, Vol. XIII., p. 556.

Rules made under specific Acts.]—*See* particular Titles *passim*.

SECT. 5.—OFFICERS AND CENTRAL OFFICE.

Masters.]—*See* Sect. 2, sub-sect. 6, *ante*.

Examiners—Appointment & duties.]—*See* EVIDENCE.

Official Solicitor.]—*See* Sect. 2, sub-sect 9, *ante*.

SECT. 6.—THE CIRCUIT SYSTEM.

See CRIMINAL LAW & PROCEDURE.

Part XII.—Courts of Criminal Jurisdiction.

Courts of summary jurisdiction.]—*See* MAGISTRATES.

Juvenile courts.]—*See* INFANTS & CHILDREN.

Quarter & general sessions.]—*See* MAGISTRATES.

Special sessions.]—*See* MAGISTRATES.

Courts of Gaol Delivery & Oyer & Terminer.]—*See* CRIMINAL LAW & PROCEDURE

Central Criminal Court.]—*See* CRIMINAL LAW & PROCEDURE.

Court of the Admiral of England.]—*See* ADMIRALTY, Vol. I., p. 99, Nos. 1–7.

Special Commissioners.]—*See* CRIMINAL LAW & PROCEDURE.

Court of Criminal Appeal.]—*See* CRIMINAL LAW & PROCEDURE

Part XIII.—Courts having Jurisdiction in Lunacy.

Appeals from.]—*See* Judicature Act, 1873 (c. 66), s. 18 (5); Appellate Jurisdiction Act, 1876 (c. 59), s. 3.

See, generally, LUNATICS & PERSONS OF UNSOUND MIND.

Part XIV.—Courts-Martial.

See ROYAL FORCES.

Part XV.—Maritime Courts.

Admiralty courts & jurisdiction.]—*See* ADMIRALTY, Vol. I., pp. 99 *et seq.*

Slave trade.]—*See* PRIZE LAW & JURISDICTION.

Formal investigation of shipping casualties.]—*See* MAGISTRATES; SHIPPING & NAVIGATION.

Naval courts.]—*See* SHIPPING & NAVIGATION.

Prize courts.]—*See* PRIZE LAW & JURISDICTION.

Part XVI.—Consular Courts.

950. Jurisdiction generally—Acquisition of.]—

(1) The effect of Foreign Jurisdiction Act, 1843 (c. 94), is to make the jurisdiction of the British consular authority in the Ottoman Empire liable to be regulated by Ord. in Council; & the Ord. in Council of Aug. 27, 1860, provides for the exercise of such jurisdiction in suits between British subjects & the subjects of foreign states.

(2) The nature & extent of the consular jurisdiction must be solved by reference to usage. The Consular Ct. has exercised a customary jurisdiction *in rem* in cases of bottomry, whence the right to exercise a similar jurisdiction in cases of collision may be inferred.—*PAPAYANNI v. RUSSIAN STEAM NAVIGATION & TRADING CO., THE LACONIA* (1863), 2 Moo. P. C. C. N. S. 161; *Brown & Lush*, 117; 3 New Rep. 219; 33 L. J. P. M. & A. 11; 9 L. T. 37; 9 Jur. N. S. 1160; 12 W. R. 90; 1 Mar. L. C. 378; 15 E. R. 862, P. C. *Annotations:—Generally, Mentd.* *The Brothers v. The Fingal* (1869), 21 L. T. 621; *Measina v. Petroccolino* (1872), L. R. 4 P. C. 144; *The Vera Cruz* (No. 1) (1884), 9 P. D. 88.

951. — Admissibility of evidence as to.]—

An alien who has enlisted in a British Indian regiment stationed in Canton, China, is a person who "enjoys his Majesty's protection" by virtue of Foreign Jurisdiction Act, 1890 (c. 37), & is therefore subject to the jurisdiction of the Supreme Ct. of China & Corea.

A private in an Indian regiment murdered one of the officers. Shortly afterwards, while he was in custody, the commanding officer asked him, "Why have you done such a senseless act?" & he replied, "Some three or four days he has been abusing me, & without doubt I killed him." At the trial the judge admitted this statement, which was objected to by counsel for the defence. The prisoner was convicted:—*Held*: even if the evidence was inadmissible, which apparently it was not, there being ample undisputed evidence *abundant* of the guilt of the prisoner, & it being very improbable that the statement influenced the verdict of the jury, there was no such miscarriage of justice as would justify the Judicial Committee in advising an interference in the matter.—*IBRAHIM v. R.*, [1914] A. C. 599; 83 L. J. P. C. 185; 111 L. T. 20; 30 T. L. R. 383; 24 Cox, C. C. 174, P. C.

Annotations:—Mentd. *R. v. Colpus & Boorman, R. v. White*, [1917] 1 K. B. 574; *R. v. Crowe & Myerscough* (1917), 81 J. P. 288; *R. v. Voisin*, [1918] 1 K. B. 531; *R. v. Cook* (1918), 34 T. L. R. 515.

Jurisdiction in criminal matters.]—See No. 951, ante, No. 958, post.

Appeals to Privy Council.]—See No. 958, post.

952. In China—Jurisdiction—Alien soldier in Indian regiment—Serving in Canton.]—IBRAHIM v. R., No. 951, *ante*.

953. — Procedure—Joinder of causes of action.]—(1) There is nothing in the rules of the cts. of China & Japan to warrant the joinder in one suit of different & distinct causes of action not

being causes of action by & against the same parties.

(2) By rules of Her Majesty's Cts. for China & Japan, r. 39, where two or more distinct causes of suit are joined in one proceeding the ct. may order that different records be made up, or dismiss the suit:—*Held*: the language of the rule with regard to the dismissal of such suits could not be construed as impliedly authorising their institution.

(3) R. 339 enacts that in all matters not expressly provided for, the English procedure shall, as far as possible, be followed:—*Held*: a number of separate claims for damages arising out of the same event could not be joined in one proceeding, such a suit never having been maintainable in England.—*PENINSULAR & ORIENTAL STEAM NAVIGATION CO. v. TSUNE KIJIMA*, [1895] A. C. 661; 64 L. J. P. C. 146; 73 L. T. 37; 11 T. L. R. 536; 8 Asp. M. L. C. 23; 11 R. 508, P. C.

Annotations:—Generally, Mentd. *Cartor v. Rigby*, [1896] 2 Q. B. 113; *Sadler v. G. W. Ry.* (1896), 45 W. R. 51; *Oxford & Cambridge Universities v. Gill* (1898), 79 L. T. 338; *Stroud v. Lawson*, [1898] 2 Q. B. 44.

954. In Egypt—Constitution.]—In answer to his wife's petition for a divorce the husband by an act on petition alleged that the spouses were domiciled in the British Protectorate of Egypt, & that the English ct. had no jurisdiction to dissolve the marriage. The husband was born in England in 1872, his father being a British subject of Russian parentage. Since 1895 he had resided permanently in Egypt. The wife was born in Egypt & had always been, & still was, domiciled there. The marriage took place at Alexandria, & the matrimonial home had always been in Egypt. The Ottoman Order in Council of 1910 which provides for the constitution & powers of His Britannic Majesty's Cts. for the dominions of the Sublime Porte, excepts from the jurisdiction in matrimonial causes conferred on those cts. the jurisdiction relative to dissolution or nullity or jactitation of marriage. The husband's name was inscribed on the register of British subjects resident in Egypt to whom certain privileges were conceded by treaty. Persons so registered were amenable only to the jurisdiction of the British consular cts. in matters civil & criminal, enjoyed immunity from territorial rule & taxation, & constituted a privileged society living under English law on Egyptian soil & independent of Egyptian Cts. & tax-gatherers. Egypt became a British Protectorate in 1914, & by a decree of the Sultan of Egypt dated Feb. 5, 1915, the then existing exceptional jurisdictions were continued:—*Held*: the English ct. had no jurisdiction to entertain a suit by his wife for dissolution of marriage.

Until Dec. 1914, Egypt was, in the contemplation of law, a part of the Ottoman dominions; but in that month the suzerainty of the Sultan of Turkey was terminated, & Egypt became a Sultanate under the protection of Great Britain. [Egypt became an independent kingdom in Mar. 1922.] The capitulations between Great Britain &

PART XVI.

1. In Uganda—Over persons not resident within a British Protectorate.]—Two natives of a German Protectorate were convicted by the English Consular Ct. of Uganda of aiding & abetting the King of Unyoro in waging war against the King of Uganda & the Queen-Empress. One of them was also convicted of slave-dealing:—*Held*: (1) the English Consular Ct. had no juris-

isdiction, inasmuch as the accused, even if subjects of a Signatory Power, were not resident, & their offences were not committed within a British Protectorate; (2) the alleged fact that the "locus in quo" was in British Military occupation gave no jurisdiction to the Consular Ct.—*QUEEN-EMPERESS v. JUMA* (1896), 1 L. R. 22 Bom. 64.—*IND.*

g. In Zanzibar—Over foreign subjects enjoying British protection.]—The

Greek residents at Zanzibar having been by international action placed under British protection, are liable to the British Criminal law in force in Zanzibar. Accused, who was a Greek under British protection at Zanzibar, was convicted by the British Consular Ct. at Zanzibar of culpable homicide not amounting to murder, and sentenced. He appealed to the H. C. of B.:—*Held*: (1) it was competent

the Sultan of Turkey were confirmed by the Treaty of the Dardanelles in 1809, & by s. 16 of that treaty it was provided that disputes amongst the English themselves should be decided by their own magistrate or consul according to their customs, without interference by the Turkish authorities. Consular cts. were accordingly established for the decision of such disputes between English subjects, not relating to land, & such cts. are now regulated in Egypt by the Egypt Order in Council of His Majesty dated Feb. 10, 1915. By that Order the jurisdiction of the Consular cts., which had been established by His Majesty in Egypt under the Capitulations, was continued. These cts. deal with disputes, not relating to land, the parties to which are all British subjects, & all questions affecting the personal status of a British subject must be determined in the consular cts. The consular jurisdiction over British subjects in Egypt is exercised under the Order in Council of Nov. 7, 1910, modified as regards Egypt by the Egypt Order in Council of Feb. 10, 1915, which was made after the renunciation of allegiance to Turkey & the constitution of Egypt as a separate Sultanate under British protection. There is a Supreme Consular Ct. sitting at Alexandria, & provincial cts. are provided for by art. 17 of the Order in Council. The ct. has jurisdiction over British subjects in Egypt, & any property there of any British subject, as also in respect of British ships within its limits. It has also jurisdiction in certain special cases with regard to Ottoman subjects & foreigners with the consent of their Government. Its jurisdiction is in matters criminal & matters civil (LORD FINLAY, C.).

In the case of the consular cts. its decrees & orders are enforced & carried out, not by consular, but by Egyptian officers (LORD ATKINSON).—CASDAGLI *v.* CASDAGLI, [1919] A. C. 145; 88 L. J. P. 49; 120 L. T. 52; 35 T. L. R. 30; 63 Sol. Jo. 39, H. L.

955. — **Jurisdiction.**—CASDAGLI *v.* CASDAGLI, No. 954, *ante*.

956. — **To issue sequestration—Against members of joint stock company.**—A railway co. & partnership complete & existing in a foreign country is not within the purview of the English Joint Stock Cos. Acts, 1856 (c. 47), 1857 (c. 14), so as to enable H. B. M. Consular Ct. in Egypt to issue sequestration against such of the members of the co. as were resident within the jurisdiction of that ct. for not complying with an order of the ct. to register the co. as one of limited liability under the English Acts.—BULKELEY *v.* SCHUTZ (1871), L. R. 3 P. C. 764; 8 Moo. P. C. C. N. S. 170; 17 E. R. 276, P. C.

Annotations:—*Reid*, Bateman *v.* Service (1881), 6 App. Cas. 386. *Ment*, Colquhoun (Surveyor of Taxes) *v.* Heddon (1890), 54 J. P. 392; *Re Syria Ottoman Ry.* (1904), 20 T. L. R. 217.

957. — **Procedure—Enforcement of decrees & orders.**—CASDAGLI *v.* CASDAGLI, No. 954, *ante*.

958. In **Japan—Constitution—Jury.**—In countries in which “by treaty, capitulation, grant, usage, sufferance & other lawful means,” the Queen has obtained jurisdiction within the meaning

of the Foreign Jurisdiction Act, 1890 (c. 37), by which she is empowered to exercise such jurisdiction “in the same & as ample a manner as if she had acquired it by the cession or conquest of territory” she is by Ord. in Council empowered to establish cts. & regulate procedure in the manner prescribed in such Ord. The Japan Ord. in Council, 1865, constituted a ct. with a jury of five, & in the ct. so established applt. was convicted of the murder of her husband:—*Held*: the Ord. was not *ultra vires*, & applt. was not entitled as a British subject to a jury of twelve.—*Ex p.* CAREW, [1897] A. C. 719; *sub nom.* CAREW *v.* CROWN PROSECUTOR IN JAPAN, 60 L. J. P. C. 95; 77 L. T. 1; 13 T. L. R. 512; 18 Cox, C. C. 625, P. C.

959. — **Jurisdiction—Order in Council cannot extend terms of treaty.**—The Ord. in Council made in pursuance of the treaty with Japan cannot operate to confer a jurisdiction upon the British cts. wider than was acquired by treaty.

In entertaining a claim by a Japanese subject or by the Japanese Govt. against a British subject the consular cts. have no jurisdiction to allow a counterclaim by deft.—IMPERIAL JAPANESE GOVERNMENT *v.* PENINSULAR & ORIENTAL STEAM NAVIGATION CO., [1895] A. C. 641; 61 L. J. P. C. 107; 72 L. T. 881; 11 T. L. R. 498; 8 Asp. M. L. C. 51; 11 R. 493, P. C.

Annotations:—*Reid*, Casdagli *v.* Casdagli, [1918] P. 89. *Ment*, Skeate *v.* Slators (1914), 83 L. J. K. B. 676; The Tervaste, [1922] P. 259.

960. — **Counterclaim by British defendant against Japanese plaintiff.**—IMPERIAL JAPANESE GOVERNMENT *v.* PENINSULAR & ORIENTAL STEAM NAVIGATION CO., No. 959, *ante*.

961. — **Procedure—Joinder of causes of action.**—PENINSULAR & ORIENTAL STEAM NAVIGATION CO. *v.* TSUNE KIJIMA, No. 953, *ante*.

962. In **Morocco—Jurisdiction—Concurrent with Supreme Court of Gibraltar.**—The Consular Ct. of Morocco & the Supreme Ct. of Gibraltar having a concurrent jurisdiction in the matter of an offence charged against applt. he was arrested in London & ordered by the Q. B. Div. to be tried before the Supreme Ct. at Gibraltar:—*Held*: as an incident to that order he was entitled to be tried according to the procedure of that ct., that is by a jury.—SPILSBURY *v.* R., [1899] A. C. 392; 68 L. J. P. C. 66; 80 L. T. 602; 63 J. P. 691; 15 T. L. R. 345; 19 Cox, C. C. 303, P. C.

963. In **Turkey—Jurisdiction—Compulsory only over British subjects.**—PAPAYANNI *v.* RUSSIAN STEAM NAVIGATION & TRADING CO., THE LACONIA, No. 950, *ante*.

964. — **Regulated by Order in Council.**—PAPAYANNI *v.* RUSSIAN STEAM NAVIGATION & TRADING CO., THE LACONIA, No. 950, *ante*.

965. — **Admiralty.**—PAPAYANNI *v.* RUSSIAN STEAM NAVIGATION & TRADING CO., THE LACONIA, No. 950, *ante*.

—*See, also*, ADMIRALTY, Vol. I., p. 255, No. 1813.

966. — **Adjustment of average.**—A ship was injured by straining in a storm, & was towed into Constantinople when some of the wheat was found to be damaged, & the ship herself unable to proceed without undergoing thorough

to H.M. to exercise jurisdiction in one foreign state over the subjects of another foreign State; (2) under Order in Council, 29 Nov., 1884, the provisions referring to British subjects were applicable to foreigners enjoi British protection in so far as I had jurisdiction at Z. in relation to such persons; (3) prisoner, being a British protected person within the order, was amenable to the jurisdiction

of *v.* REGO MONTEIRO (1888), 21 Q. B. 19 Bom. 741.—IND.

h. — **Whether judgments in civil cases subject to revision.**—The High Ct. at Bombay has no power of revision over civil cases tried by the Consular Ct. at Zanzibar, though it is authorised to hear appeals from the decisions of that Ct. as a District Ct.

incident of appellate powers, but, on the contrary, can only be exercised where there is no appeal; & had it been intended to give such powers to the High Ct. at Bombay, it would necessarily have been expressly provided for.—KHOJA SHIVJI SOMJI *v.* HASHAM GULAM HUSSEIN (1895), 1 L. R. 20 Bom. 480.—IND.

repair. The British Supreme Consular Ct. was applied to by petition, & surveyors were appointed, who recommended the sale of the damaged portion of the cargo, & the transshipment of the rest, & an order of the ct. was made in accordance with this recommendation. Subsequently the ct. duly appointed average adjusters, who investigated the various claims, & they, following the decision of the judge of the Consular Ct. to whom the question was submitted, made up the average adjustment according to the law of France, & the average adjustment was registered & homologated by a decree of the ct. The damage to the wheat was treated as general average, & properly so, according to the law of France. Upon action brought to recover a general average loss:—*Held*: the Consular Ct. at Constantinople had jurisdiction to make the orders.—*MAVRO v. OCEAN MARINE INSURANCE Co.* (1874), L. R. 9 C. P. 595; 43 L. J. C. P. 339; 31 L. T. 186; 2 Asp. M. L. C. 361; *ibid.* (1875), L. R. 10 C. P. 414, Ex. Ch.
Annotations:—*Mentd.* Hill v. Wilson (1879), 4 C. P. D. 329; *Assicurazioni Generali v. S.S. Bessie Morris Co.*, [1892] 1 Q. B. 571.

967. — To order sale of land in Turkey
—Held by British subject in name of Turkish subject.—Previously to the protocol of June, 1867, permitting British subjects to hold land in Turkey in their own names, they were permitted only to hold land in the name of some female relative, or of some native subject of the Ottoman Empire. Two partners who owned some land before 1868 had not availed themselves of the protocol, but continued to hold the land in the name of a subject of the Sultan. A suit was instituted by one of the partners in the Supreme Consular Ct. of Constantinople for the dissolution of the partnership & for taking the accounts. An order was made in the suit that the receiver should sell the land by auction:—*Held*: the order was not *ultra vires* of the ct.—*ABBOTT v. ABBOTT* (1871), L. R. 6 P. C. 220, P. C.

968. — Of person not party to suit.—A suit was brought in the Consular Ct. of Turkey by resp. against the wife of applt. for a sale of a piece of land in Prinkipo, with the mill & bakery erected thereon, & for the payment of three-fourths of the proceeds into ct. Resp. was trustee in liquidation in respect of the three-fourths share only in the beneficial interest in the said property, which share was subject to a mtge., applt. who was no party to the suit, being entitled to the remaining one-fourth share unincumbered:—*Held*: the ct. could not compel a sale nor put a purchaser into possession of more than the three-fourth's share, subject to the mtge., which was vested in resp.—*PITTS v. LA FONTAINE* (1880), 5 App. Cas. 564; *subsequent proceedings*, 6 App. Cas. 482, P. C.

—*See, also*, CONFLICT OF LAWS, Vol. XI., p. 368, No. 481.

969. — Procedure.—By the Ord. in Council creating the Consular Ct. at Constantinople, it is provided that the procedure is to be so framed as to insure substantial justice on the merits, without regard to strict technicalities of pleading.—*BLACK v. OTTOMAN BANK* (1862), 15 Moo. P. C. C. 472; 6 L. T. 763; 8 Jur. N. S. 801; 10 W. R. 871; 15 E. R. 573, P. C.

Annotations:—*Mentd.* Wulff v. Jay (1872), 41 L. J. Q. B. 322; *Mansfield Grdns. v. Wright* (1882), 9 Q. B. D. 683; *Carter v. White* (1883), 25 Ch. D. 666; *Durham Corpn. v. Fowler* (1889), 22 Q. B. D. 394; *Kingston-upon-Hull Corpn. v. Harding* (1892), 41 W. R. 19.

Judgment in consular court—Validity of—Foreign consular court.—*See* CONFLICT OF LAWS, Vol. XI., p. 456, No. 1130.

970. — As defence to action.—A charter party contained a clause, that freight should be paid "on unloading & right delivery of the cargo, less advances in cash at current rate of exchange; one half of the freight to be advanced by freighter's acceptance at three months on signing bills of lading." The charterer gave his acceptance accordingly, & received from the purchaser of the cargo the agreed price of the cargo less the amount of freight remaining to be paid to the captain on delivery at Alexandria, the port of discharge. Before the acceptance became due, & before the vessel arrived at Alexandria, the charterer became insolvent, & executed an inspectorship deed. The captain, having heard of the insolvency, refused to give up the cargo without payment of the whole freight, which was ultimately guaranteed by persons at Alexandria, at the request of the purchaser of the cargo. The captain sued these persons in the Consular Ct. of Alexandria, & they, by the authority of the purchaser of the cargo, paid him the whole amount of the freight. The charterer's acceptance came to maturity after the captain had obtained the guarantee for payment of the whole freight, & was dishonoured:—*Held*: (1) the purchaser of the cargo was entitled to receive it, on payment of half the freight; (2) the proceedings in the consular ct. did not debar him from recovering in this ct. the amount paid to the captain in excess of what he was entitled to demand.

The second question is, whether the proceedings in the Consular Ct. at Alexandria bar the pltf.'s right to recover in this ct. I think that they do not (*WILLES, J.*).—*TAMVACO v. SIMPSON* (1865), 19 C. B. N. S. 453; 34 L. J. C. P. 268; 13 L. T. 160; 11 Jur. N. S. 926; 13 W. R. 1109; 2 Mar. L. C. 249; 144 E. R. 863; *affd.* (1866), L. R. 1 C. P. 363, Ex. Ch.

Annotation:—*Generally, Mentd.* Coulthurst v. Sweet (1866), L. R. 1 C. P. 649.

—*See, also*, CONFLICT OF LAWS, Vol. XI., pp. 465, 467, Nos. 1209, 1233.

Protection of judges.—*See* PUBLIC AUTHORITIES & PUBLIC OFFICERS.

Part XVII.—Forest Courts.

971. Jurisdiction—Subject to common law.]—J. DE W.'s CASE (1371), Y. B. 45 Edw. 3, fo. 7, pl. 8.
*Annotations:—***Refd.** Crowley's Case (1818), 2 Swan, 1.
Mentd. Wood's Case (1771), 2 Wm. Bl. 745.

972. — Not exercised by common law courts.]—ANON. (1506), Keil. 150 b, pl. 43; 72 E. R. 324.

973. — Concurrent with common law courts.]—Judgment before justices in eyre will not bar the right of the party, but he can bring an action at common law.—**NORFOLK (DUKE) v. NEWCASTLE (DUKE)** (1666), 1 Sid. 296; 82 E. R. 1116.

*Annotation:—***Mentd.** Layton's Case (1705), 11 Mod. Rep. 59.

974. — Rights of common over wastes of forest—Jurisdiction of Court of Chancery.]—A bill was filed on behalf of all the owners & occupiers of land within a forest, other than the waste lands of the forest, except such of them as were defts. or were alleged to be sufficiently represented by defts. or some of them, to establish a right of common over all the wastes of the forest:—**Held:** the Ct. of Ch. had jurisdiction in the matter.

It is alleged in the bill that the forest cts. had jurisdiction to do certain things, but there is no allegation in which it is said, or from which it can be inferred, that the forest cts. had any exclusive jurisdiction or that there is any law of the forest preventing this ct. from having jurisdiction to entertain a bill in relation to a right of this kind (JAMES, L.J.).—**SEWERS COMRS. OF LONDON v. GLASSE** (1872), 7 Ch. App. 456; 41 L. J. Ch. 409; 26 L. T. 647; 20 W. R. 515, L. J.J.

*Annotations:—***Mentd.** Allgood v. Gibson (1876), 34 L. T. 883; London Sewers Comrs. v. Gellatly (1876), 24 W. R. 1059; Lascelles v. Onslow (1877), 2 Q. B. D. 433; McHenry v. Lewis (1882), 52 L. J. Ch. 16; Howard v. Maitland (1883), 11 Q. B. D. 695; Temperton v. Russell (1893), 9 T. L. R. 298.

Right of subject to hold forest courts.]—*See* CONSTITUTIONAL LAW, Vol. XI., p. 586, No. 871.

Royal forests.]—*See* CONSTITUTIONAL LAW, Vol. XI., p. 586, No. 871 *et seq.*

Removal of proceedings in by certiorari.]—*See* CROWN PRACTICE, p. 401, No. 2451, *post.*

Part XVIII.—Court of Chivalry.

975. Jurisdiction—Over armorial ensigns & bearings.]—The Ct. of Chivalry takes cognisance of questions relating to the right to use armorial ensigns & bearings.—**SCROOP v. GROSVENOR** (1389), Calendar of Close Rolls, Richard II., Vol. III., p. 586.

976. — Criminal jurisdiction.]—REA (LORD) v. RAMSEY (1631), 3 State Tr. 483.

977. Whether prohibition lies.]—OLDIS v. DONMILLE (1695), Show. Parl. Cas. 58; 1 E. R. 40.

*Annotations:—***Refd.** Clerk v. Lee (1714), 10 Mod. Rep. 258.
Mentd. Sturla v. Freccia (1840), 5 App. Cas. 623.

978. —.]—CHAMBERS v. JENNINGS (1702), 7 Mod. Rep. 125; 2 Salk. 553; Holt, K. B. 597; 87 E. R. 1139.

*Annotations:—***Refd.** Lockett v. Dangerfield (1738), Andr. 286; *Re* Clifford & O'Sullivan, [1921] 2 A. C. 570.

979. Governed by civil law—Right of appeal.]—The Ct. of Chivalry proceeds according to the rules of the civil law, except in cases omitted, & there they go according to the course & custom of chivalry & arms. By the canon law an appeal is admitted from all grievances in general, but as the Ct. of Chivalry is governed by the civil law, this ct. will not grant a commission of delegates upon an appeal from any interlocutory order of that ct. except only where there is a definitive sentence, or such an one as is termed in the civil law, *gravamen irreparabile*.—**BLOUNT'S CASE** (1737), 1 Atk. 295; 26 E. R. 189; *sub nom.* *Ex p.* BLUNT, *Ex p.* HENCHMAN, West temp. Hard. 25, L. C.
*Annotations:—***Mentd.** The Dictator, [1892] P. 301; *Re* Clifford & O'Sullivan, [1921] 2 A. C. 570.

See, also, PEERAGES & DIGNITIES.

Part XIX.—Court of Claims.

980. How far conclusive.]—Although the decision of the Ct. of Claims cannot be treated as *res judicata* so as to bar further litigation, it proceeded from a very high authority which it is not safe to call in question unless there is a very clear

case (LORD LOREBURN, C.).—**SCRYMGEOUR WEDDERBURN v. LAUDERDALE (EARL)**, [1910] A. C. 342; *sub nom.* **WEDDERBURN v. LAUDERDALE (EARL)**, 26 T. L. R. 389, H. L.

Part XX.—Courts held by Sheriff.

See SHERIFFS & BAILIFFS.

Part XXI.—Palatine Courts.

SECT. 1.—COURT OF DUCHY CHAMBER OF LANCASTER.

981. Extent of jurisdiction—In general.]—Defts. inform, that the bill is exhibited for certain lands, parcel of the Duchy of Lancaster; & therefore ordered, that for so much it shall be dismissed.—*PRICE v LLOYD* (1579), *CARY*, 97; 21 E. R. 52.

982. ———.]—OWEN v. HOLT (1614), *Hob.* 77; 80 E. R. 227.

983. ———.]—Prohibition granted to the Ct. of the Duchy of Lancaster because they questioned there the validity of letters patent granted to W.—*WARNER v. SUCKERMAN & COATES* (1615), 3 Bulst. 119; 81 E. R. 101; *sub nom.* *COATS & SUCKERMAN v. WARNER*, 1 Roll. Rep. 252. *Annotation:—Mentd. Re Forster v. Forster & Berridge* (1863), 4 B. & S. 187.

984. ———.]—HULSE v. DANIEL (1629), *Toth.* 82; 21 E. R. 130.

985. Not exclusive of superior courts.]—Where lands in the Duchy of Lancaster had been granted under the seal of the Duchy or the Crown proceedings in respect of them in ct. of the Duchy are liable to be restrained by injunction in Ch. since the Ct. of Ch. has priority of jurisdiction.—*LEVINGTON v. WOOTON* (1631), 1 Rep. Ch. 52; 21 E. R. 505.

986. ———.]—FLEETWOOD v. POOL (1660), *Hard.* 171; 145 E. R. 436.

987. ———.]—Prohibition refused to the Duchy Ct. at Westminster for holding plea by English bill of lands in the County Palatine.—*FISHER v. PATTEN* (1671), 2 Keb. 826; 2 Lev. 24; 81 E. R. 522.

988. ———.]—The Ct. of Exch. has jurisdiction over matters in equity arising within the county palatine of Lancaster.

A demurrer to a bill for want of jurisdiction, because the subject-matter of the suit, which was transitory, arose & the parties resided within that county palatine, & the jurisdiction of its Ct. of Ch., was overruled.—*CHEETHAM v. CROOK* (1825), *M'Cle. & Yo.* 307.

989. Court of revenue only.]—The Duchy Ct. is a ct. of revenue only, & is not privileged to bring up a prisoner by *habeas corpus*.—*R. v. SMITH* (1759), 2 Keny. 578; 96 E. R. 1285.

SECT. 2.—CHANCERY COURT OF LANCASTER.

SUB-SECT. 1.—JURISDICTION.

990. Whether co-ordinate with Court of Chancery.]—Bill for discovery of title to lands in the County of Lancaster:—*Held*: the jurisdiction of the County Palatine of Lancaster excluded that of the High Ct. of Ch.—*GERRARD v. STANLEY* (1667), 1 Rep. Ch. 278; 21 E. R. 572.

991. ———.]—In 1874, a petition was presented in the Ct. of the County Palatine of Lancaster for a guardian & maintenance to two infants, who were entitled for life to a very large property under their great-grandfather's will. Their mother & another person were appointed guardians, & an allowance for maintenance was fixed, & was afterwards varied from time to time by the ct. In 1877, the mother, as next friend of the infants, obtained in the High Ct. a judgment for administration of testator's estate, & then took out a summons in the action for the appointment of

guardians & an allowance for maintenance. This summons was not served on the other guardian, but he heard of it, & by the direction of the V.-C. of the County Palatine took out a summons for directions in the Palatine Ct. On the summons being attended, the V.-C. expressed strong disapprobation of the conduct of the mother in taking out the summons in the High Ct., took an undertaking, which she voluntarily offered, not to proceed further with the summons in the High Ct., & made a reference to the registrar as to revising the allowances for maintenance. Soon afterwards, the mother, as next friend of the infants, applied to the V.-C. of the County Palatine to discharge the undertaking & to stay proceedings in the Palatine Ct. This application having been refused, the mother, as next friend of the infants, appealed:—*Held*: (1) although the High Ct. had full jurisdiction to appoint guardians & order maintenance, notwithstanding the previous orders made by the Palatine Ct., such jurisdiction ought not to be exercised unless some special ground was shown, inasmuch as it was better for the infants that their maintenance & education should remain under the direction of the judge who had directed them for three years, & was fully acquainted with the case, & the proceedings in the Palatine Ct. ought not to be stayed; (2) as the V.-C. of the County Palatine had no jurisdiction to grant an injunction to restrain proceedings in the High Ct., he ought not to have taken an undertaking to discontinue them, & the undertaking would be discharged.—*Re ALISON'S TRUSTS, Re JOHNSONS, INFANTS* (1878), 8 Ch. D. 1; 47 L. J. Ch. 755; 38 L. T. 304; 26 W. R. 450, C. A.

Annotations:—Reid. Re Swire, Mellor v. Swire (1882), 46 L. T. 437; *Re Connolly, Wood v. Connolly*, [1911] 1 Ch. 731.

992. In lunacy—Cannot appoint new trustee—In place of trustee of unsound mind—Trustee Act, 1850 (c. 28).]—The appointment, under Trustee Act, 1850 (c. 28), of a new trustee in the place of one of unsound mind not so found by inquisition, belongs to the jurisdiction in lunacy, & not to that of the Ct. of Ch. It cannot therefore be exercised by the Ct. of Ch. of Lancaster.—*Re ORMEROD* (1858), 3 De G. & J. 249; 28 L. J. Ch. 55; 32 L. T. O. S. 153; 4 Jur. N. S. 1289; 7 W. R. 71; 44 E. R. 1264, L. J. J.

Annotation:—Mentd. Re M., [1899] 1 Ch. 79.

993. Land partly situate out of jurisdiction—Sale by court.]—A sale by the ct. of land not within its jurisdiction cannot take effect in the Duchy Ct. of Lancaster. Part of the real estate in question is situate in the county of C., & out of the jurisdiction of the Duchy Ct. of Lancaster, & I am of opinion that I cannot in that state of circumstances, stay the suit in this ct. though, if the Duchy Ct. of Lancaster had complete & entire jurisdiction over the whole matter, I should not hesitate to do so (*ROMILLY, M.R.*).—*WYNNE v. HUGHES* (1859), 26 Beav. 377; 28 L. J. Ch. 283; 32 L. T. O. S. 329; 5 Jur. N. S. 165; 53 E. R. 943; *Order varied*, 28 L. J. Ch. 485, L. J. J.

Annotations:—Reid. Re Yates (1863), 3 De G. J. & Sm. 402; *Re Alison's Trusts, Re Johnsons* (1878), 38 L. T. 304; *Re Longdendale Cotton Spinning Co.* (1878), 8 Ch. D. 150.

994. In personam—Extends to property wherever situate.]—The principle under which the jurisdiction *in personam* of the old Ct. of Ch. extends, in effect, to property wherever situate, applies to the Ch. Ct. of the County Palatine of Lancaster.

Defts. in an action in the Ch. Ct. of the County Palatine of Lancaster were within but their property was beyond the boundary of the local jurisdiction:—*Held*: the jurisdiction of that ct. was the jurisdiction *in personam* of the old Ct. of Ch. within the boundary, & therefore the Palatine Ct. could exercise jurisdiction over the property, & could enforce any order in the action by applying to the Supreme Ct. under Ct. of Ch. of Lancaster Act, 1854 (c. 82), s. 7, & Jud. Act, 1873 (c. 66), s. 18 (2), & a motion by defts. to stay the action for want of jurisdiction would be refused with costs.—*Re LONGDENDALE COTTON SPINNING CO.* (1878), 8 Ch. D. 150; 48 L. J. Ch. 54; 38 L. T. 776; 26 W. R. 491.

Innotation:—Mentd. *Andrew v. Swansea Cambrian Benefit Bldg. Soc.* (1880), 50 L. J. Q. B. 428.

995. In regard to infants.]—*Re ALISON'S TRUSTS, Re JOHNSONS, INFANTS, No. 991, ante.*

996. — Not ousted by insanity during infancy.]—The jurisdiction of the Lancaster Palatine Ct. & of the High Ct. of Justice over its infant wards is not ousted by the fact that the wards during their infancy may become of unsound mind. In such cases, therefore, such cts. have jurisdiction to entertain applications respecting the custody & education of the infants, although they may be of unsound mind & although the question of their sanity may be the principal point in dispute.—*Re EDWARDS* (1879), 10 Ch. D. 605; 48 L. J. Ch. 233; 40 L. T. 113; 27 W. R. 611, C. A.

997. Patents Designs & Trade Marks Act, 1883 (c. 57), s. 31—Vice-Chancellor not "court" or "judge."—*PROCTOR v. SUTTON LODGE CHEMICAL CO.* (1888), 5 R. P. C. 181.

See, now, Patents & Designs Act, 1907 (c. 29), s. 35.

998. Power to direct trial of issue of fact by jury—Before court itself—Chancery Amendment Act, 1858 (c. 27), s. 3.]—*YATES v. KYFFIN-TAYLOR & WARK*, [1899] W. N. 141.

Annotation:—Mentd. *In the Estate of Crippen*, [1911] P. 108.

999. — At assizes—Chancery Regulation Act, 1862 (c. 42), s. 2.]—*YATES v. KYFFIN-TAYLOR & WARK*, [1899] W. N. 141.

Annotation:—Mentd. *In the Estate of Crippen*, [1911] P. 108.

See Chancery of Lancaster Act, 1890 (c. 23), s. 3. Power to stay proceedings.]—See No. 991, ante.

SUB-SECT. 2.—PRACTICE AND PROCEDURE.

See CHANCERY OF LANCASTER ACT, 1890 (c. 23).

1000. Service on parties out of jurisdiction—Order of Court of Appeal—Court of Chancery of Lancaster Act, 1854 (c. 82), s. 8.]—(1) A suit was instituted by claim in the Ct. of Ch. of the County Palatine of Lancaster, & pltf. applied to the Lords Justices under the above Act, ss. 5 & 8. Their Lordships ordered that service of the claim in the suit should be effected out of the jurisdiction of the Palatine Ct. & directed, under s. 5, that the order should be drawn up by a registrar of the High Ct. of Ch.

(2) The mere allegation that points of legal difficulty arose in this suit instituted in the Ch. Palatine Ct. did not induce the High Ct. of Ch. to order the transfer under s. 8 to its own jurisdiction.—*WALTHAM v. GOODYEAR* (1855), 7 De G. M. & G. 76; 24 L. J. Ch. 587; 1 Jur. N. S. 197; 3 W. R. 352; 44 E. R. 30, L. JJ.

1001. — — — — —.]—*Re JOHNSON* (1892), 36 Sol. Jo. 411, C. A.

1002. — — — — — Winding up of company.]

—Under sect. 8 of the above Act, the Ct. of Appeal has jurisdiction to give leave to serve notices of orders & other proceedings in the winding up of a co. which is being wound up by the Ct. of Ch. of the County Palatine of Lancaster, on persons residing in England outside the county of Lancaster.—*Re STATE BANKING CORPN., LTD.* (1907), 51 Sol. Jo. 265, C. A.

1003. — Service of writ on sole defendant.]—Where the sole deft. to an action commenced in the Ch. Ct. of the County Palatine of Lancaster is resident out of the jurisdiction of that ct. leave to serve the writ of summons upon him out of the jurisdiction, if it will be granted at all, will only be granted under very special circumstances.

—*Re WATMOUGH, SERGIENSON v. BELOE* (1883), 24 Ch. D. 280; 49 L. T. 220; 32 W. R. 101, C. A.

1004. — Leave of Vice-Chancellor or court required—For application to Court of Appeal.]—Ord. 2, r. 4, of the Chancery of Lancaster Rules, which provides that "no writ of summons for service out of the jurisdiction . . . shall be issued without the leave of the ct. or V.-C.," applies to all writs for service out of the jurisdiction of the Palatine Ct. whether the person to be served is or is not within the jurisdiction of the High Ct. Leave of the V.-C. or Ct. of the County Palatine for issue of the writ out of the jurisdiction must be obtained before making application to the Ct. of Appeal under Ct. of Ch. of Lancaster Act, 1854 (c. 82), s. 8, for leave to serve the writ upon a person out of the jurisdiction of the Palatine Ct. but within the jurisdiction of the High Ct.—*WALKER v. DODDS* (1887), 37 Ch. D. 188; 57 L. J. Ch. 206; 58 L. T. 291; 36 W. R. 133, C. A.

1005. Enforcement of order—Party out of jurisdiction—Submission to jurisdiction—Court of Chancery of Lancaster Act, 1850 (c. 43), s. 15.]—In order to enforce against deft. an order for leave to issue a writ of attachment made by the ct. of the County Palatine of Lancaster, deft. having submitted to the jurisdiction, but being out of the jurisdiction of that ct. application should be made to the High Ct. under the above Act.—*DUNMORE v. WHARAM* (1898), 67 L. J. Ch. 221; 78 L. T. 38; 46 W. R. 366; 42 Sol. Jo. 270.

1006. When transfer to High Court ordered—Not on mere allegation of points of legal difficulty.]—*WALTHAM v. GOODYEAR*, No. 1000, *ante*.

1007. — Principal defendant out of jurisdiction.]—Persons who had assigned property in trust for their creditors brought an action in the Ct. of the County Palatine against the trustees & a purchaser from them, for accounts, & to impeach the sale, alleging fraudulent dealings by the trustees & a collusive sale at an undervalue. The property was within the jurisdiction of the Palatine Ct. & all the parties resided within it at the time of the sale, but one of the trustees, whose conduct was especially impeached, had since gone to reside out of the jurisdiction of that ct. By leave of the Ct. of Appeal, service on him out of the jurisdiction of the Palatine Ct. was effected. He then applied to transfer the action to the High Ct. The other defts. except a deft. having a very small interest concurrent with that of pltf. supported the application:—*Held*: without laying down any general rule, appt. being the principal deft. no sufficient reason was shown in this case for obliging him to defend the action in the County Palatine, & it ought to be transferred to the High Ct.—*COOKE v. SMITH* (1890), 44 Ch. D. 72; 62 L. T. 712, C. A.

1008. Joinder of causes of action—Application of R. S. C. & Palatine Court rules.]—Under R. S. C., Ord. 16, r. 1, before Oct. 1896, separate

Sect. 2.—Chancery Court of Lancaster: Sub-sects. 2 & 3. Sect. 3. Parts XXII. & XXIII. Sects. 1 & 2: Sub-sects. 1 & 2.]

causes of action against different defts. could not be joined, but at that date the rule was altered so as to permit, under certain restrictions, such a joinder. Ord. 16, r. 1, of the Rules of the Lancaster Palatine Ct. which was identical with R. S. C., Ord. 16, r. 1, as it originally stood, was not so amended; but Ord. 57, r. 2, of the Palatine Ct. rules provides for following "the course of procedure & practice for the time being adopted in the Ch. Div. of the High Ct. of Justice," if "in any case it shall be found that the procedure & practice in respect of actions, or of other matters in the ct. is not in any particulars fully & adequately provided for by the rules for the time being in force in the ct." In an action in the Palatine Ct. where separate causes of action against several defts. were joined, one of the defts. applied to have his name struck out for misjoinder:—*Held*: Ord. 57, r. 2, did not automatically alter Ord. 16, r. 1, of the Palatine Ct. Rules, so as to introduce the practice of the High Ct., & appt. was therefore entitled to have his name struck out as a deft. to the action.—*HARE SPINNING CO. v. LEIGH*, [1919] 1 Ch. 260; 88 L. J. Ch. 124; 120 L. T. 547, C. A.

1009. Stay of proceedings—In High Court—Land partly out of jurisdiction.]—*WYNNE v. HUGHES*, No. 993, *ante*.

1010. — Property wholly out of jurisdiction.]—*Re LONGDENDALE COTTON SPINNING CO.*, No. 994, *ante*.

1011. — Refused to stranger to proceedings.]—A creditor who has obtained an administration decree in the Lancaster Palatine Ct. has no *locus standi* to move to stay proceedings under another decree subsequently obtained in a suit in the High Ct. of Ch., to which he is not a party, & in which he has not proved his debt.—*Re YATES* (1863), 3 De G. J. & Sm. 402; *sub nom. BRADLEY v. STELFOX*, *Re YATES*, 1 New Rep. 221; 46 E. R. 690, L. C.

Annotation:—*Mentd. Re Longdendale Cotton Spinning Co.* (1878), 8 Ch. D. 150.

1012. — Party out of jurisdiction.]—An injunction was granted by the Lords Justices, as the Ct. of Appeal from the Chancery Ct. of Lancaster, to restrain a person out of the jurisdiction of that Ch. Ct. from prosecuting an action which he had commenced in the Ct. of Q. B.—*DOWNES v. JACKSON* (1866), 14 W. R. 907, L. J.

1013. — No jurisdiction in Vice-Chancellor of County Palatine to grant.]—*Re ALISON'S TRUSTS*, *Re JOHNSONS, INFANTS*, No. 991, *ante*.

1014. — In Palatine Court—Concurrent action in High Court.]—Where a debenture holder in a co. carrying on business in the County Palatine of Lancaster commenced a representative action in the Ch. Div. of the High Ct. to enforce the debentures & gave notice of motion for the appointment of a receiver, & before the motion came on for hearing, the owner of an equitable charge granted by the co. after the issue of the debentures on land acquired by it in Manchester commenced an action in the Lancaster Palatine Ct. with full knowledge of the High Ct. action, to enforce his security & obtained *ex p.* the appointment of a receiver, who was subsequently continued on notice, notwithstanding that in the meantime, to the knowledge of the Palatine Ct. a different person had been appointed receiver in the High Ct. action. Upon a motion in the Ch. Div. by pltf. in the High Ct. action for an injunction to restrain pltf. in the Palatine action, who had since been added as a deft. to the High Ct. action, from further proceeding with the Palatine action:—*Held*: the ct. had jurisdiction to grant the injunction, & that jurisdiction ought to be exercised on the ground that the Palatine action was vexatious.—*Re CONNOLLY BROTHERS, LTD.*, *WOOD v. CONNOLLY BROTHERS, LTD.*, [1911] 1 Ch. 731; 80 L. J. Ch. 409; *sub nom. Re CONOLLY BROTHERS, LTD.*, *WOOD v. CONOLLY BROTHERS, LTD.*, 104 L. T. 693, C. A.

Annotations:—*Mentd. Guaranty Trust Co. of New York v. Hannay*, [1915] 2 K. B. 536; *Cohen v. Rothfield*, [1919] 1 K. B. 410.

SUB-SECT. 3.—APPEALS.

1015. Time for bringing—Subject to R. S. C., Ord. 58, r. 15.]—All appeals from orders of the Lancaster Palatine Ct. whether interlocutory or final, are now governed by the rules in the Jud. Act, 1875 (c. 77), sched. 1, & not by Lancaster Palatine Court Act, 1850 (c. 43). Such appeals, therefore, as to time, are subject to Ord. 58, r. 15.—*LEE v. NUTTALL* (1879), 12 Ch. D. 61; 41 L. T. 4; 27 W. R. 805; *sub nom. Re NEVILLE*, *LEE v. NUTTALL*, 48 L. J. Ch. 616, C. A.

Annotations:—*Mentd. Re Hopkins, Williams v. Hopkins* (1881), 18 Ch. D. 370; *Re Maggi, Winchouse v. Winchouse*, (1882), 20 Ch. D. 545; *D'Epineuil, Tadman v. D'Epineuil* (1882), 30 W. R. 423; *Re Jones, Calver v. Laxton* (1885), 31 Ch. D. 440; *Re Baker, Nichols v. Baker* (1890), 44 Ch. D. 262; *Re Miy, Crawford v. May* (1890), 45 Ch. D. 499; *Re Leng, Tarn v. Emmerson*, [1895] 1 Ch. 652; *Davies v. Parry*, [1899] 1 Ch. 602; *Re Rhoades, Ex p. Rhoades*, [1899] 2 Q. B. 347; *Re Whitaker, Whitaker v. Palmer*, [1900] 2 Ch. 676; *Re Ambler, Woodhead v. Ambler*, [1905] 1 Ch. 697; *Re Sutherland, Michell v. Bubna*, [1914] 2 Ch. 720.

1016. Leave to appeal—Judicature Act, 1894 (c. 16), s. 1 (1).]—*DOWSON, TAYLOR & CO. v. DROSPHORE & CO., LTD.* (1895), 39 Sol. Jo. 262; 12 R. 138; 12 R. P. C. 95, C. A.

See Jud. Act, 1873 (c. 66), s. 18; Chancery of Lancaster Act, 1890 (c. 23).

SECT. 3.—CHANCERY COURT OF DURHAM.

See Palatine Court of Durham Act, 1889 (c. 47); Chancery of Durham Rules, 1889.

Part XXII.—Courts of the Cinque Ports.

1017. Plea of privilege—Must show defendant commorant there.]—Plea of privilege of the Cinque Ports must aver that deft. was commorant there.—*THOMSON v. FOKES* (1671), *Freem. K. B.* 12; 89 E. R. 11.

Court of Admiralty.]—See *ADMIRALTY*, Vol. I., pp. 249, 250, Nos. 1774–1776.

Cinque Ports Salvage Commissioners.]—See *ADMIRALTY*, Vol. I., p. 250, Nos. 1777–1783.

Jurisdiction not lost by non-user.]—See No. 253, *ante*.

Whether writ of habeas corpus runs to Cinque Ports.]—See *CROWN PRACTICE*, p. 249, Nos. 477–479, *post*.

Part XXIII.—Borough and Local Courts of Record.

SECT. 1.—IN GENERAL.

1018. Remedy for failure to hold—According to charter—Whether by information against mayor.]—An information against the mayor of a borough for not holding the cts. weekly according to the charter, refused, because the neglect did not appear to be wilful, in delay of justice, or oppression of the subject.—*R. v. HALFORD* (1733), *Ridg. temp.* II. 31; 7 *Mod. Rep.* 193; 27 E. R. 748.

1019. Default of appearance—Process not served personally—Whether attachment lies by custom.]—Upon error from an inferior ct. it appeared by the record that in an action of debt, a summons & attachment issued at the same time, & were returnable at the same time, & neither of them was served personally on deft. At the return of these writs pltf. declared, & at a subsequent ct. had judgment by default, deft. never having appeared, & no appearance having been entered for him. The recorder of the inferior ct. certified this to be the practice of the ct. according to immemorial custom:—*Held*: the custom to declare against a deft. before entry of appearance by him or by some person for him, was bad in law. *Semble*: the custom to issue a summons & attachment at the same time was also bad.—*WILLIAMS v. BAGOT* (LORD) (1825), 3 B. & C. 772; 5 *Dow. & Ry. K. B.* 719; 107 E. R. 920.

Annotations:—*Refd.* *Douglas v. Forrest* (1828), 4 *Bing.* 686. *Mentd.* *Geils v. Dickenson* (1852), 17 *Jur.* 423; *Ex p. Story* (1852), 8 *Exch.* 195; *Barber v. Lamb* (1860), 8 C. B. N. S. 95.

1020. Concurrent issue of summons & attachment—Whether custom good.]—*WILLIAMS v. BAGOT* (LORD), No. 1019, *ante*.

Appeals.]—See Nos. 816, 817, *ante*, Nos. 1059–1061, 1122, *post*.

See, generally, *PRACTICE & PROCEDURE*.

SECT. 2.—COURTS OF PIE POWDRE.

SUB-SECT. 1.—CONSTITUTION.

1021. May be held without fair or market—By custom.]—*ANON.* (1473), Y. B. 13 *Edw.* 4, fo. 8, pl. 2.

Annotations:—*Refd.* *Halman v. Collins* (1596), *Cro. Eliz.* 489; *Johnson v. Underwood* (1618), *Cro. Jac.* 493; *Hodges v. Moyse* (1626), *Cro. Car.* 46; *Newcastle v. Workop U. C.*, [1902] 2 *Ch.* 145.

1022. —.]—A ct. of pie powder may by custom be incident to a market as well as a fair, & can by custom belong to a city or place where there is no fair or market at the time.

The plea should be entered at the ct. held on the days on which the cause of action arises.

An action for slander will not lie in such a ct., unless it be an action for slandering a man's wares.—*HALL v. JONES* (1600), *Moore, K. B.*

623; 72 E. R. 799; *sub nom.* *HOWEL v. JOHNS*, *Cro. Eliz.* 773.

1023. Incident to fair or market—Without special grant.]—*ANON.* (1497), Y. B. 12 *Hen.* 7, fo. 15, 17 pl. 1.

Annotations:—*Mentd.* *Jentleman's Case* (1583), 6 *Co. Rep.* 11 a; *Richards & Bartlet's Case* (1584), 1 *Leon.* 19; *Griesley's Case* (1588), 8 *Co. Rep.* 38 a; *Thorne v. Tyler* (1642), *March*, 161.

1024. May be founded on prescription.]—(1) Act. of pie powders can be founded on prescription.

(2) A ct. of pie powders which is incident to a fair or market can only decide cases which arose during the fair; but one founded on prescription can decide cases which arose before.

An action for slanderous words does not lie in a ct. of pie powders unless they were spoken within the market or fair.

(3) A ct. of pie poudre has, properly, jurisdiction only over matters arising in markets & fairs, but by special custom it may take cognisance for any cases transitory & personal.—*GOODSON v. DUFFIELD* (1612), *Cro. Jac.* 313; *Moore, K. B.* 830; 79 E. R. 268.

Annotation:—*Generally*, *Mentd.* *R. v. Larwood* (1694), 1 *Ld. Raym.* 29.

1025. Not intended to be a court—Unless held by charter or prescription.]—The ct. being styled "a ct. of pypowders," which is a ct. incident to fairs & markets, & for causes only arising within them, shall not be intended a ct. unless it be shown to be held by charter or prescription.—*HODGES v. MOYSE & SCRIVEN* (1626), *Cro. Car.* 46; 79 E. R. 644.

Annotations:—*Refd.* *Evans v. Roberts* (1703), 6 *Mod. Rep.* 61. *Mentd.* *Michelson v. Cawsey* (1703), 6 *Mod. Rep.* 72.

SUB-SECT. 2.—JURISDICTION.

1026. General rule.]—*GOODSON v. DUFFIELD*, No. 1024, *ante*.

1027. Court incident to market or fair—Only cases arising during fair.]—*GOODSON v. DUFFIELD*, No. 1024, *ante*.

1028. Court founded on prescription—Cases arising before fair.]—*GOODSON v. DUFFIELD*, No. 1024, *ante*.

1029. Only over matters arising on day of sitting—Not over contract made at precedent fair.]—*HALL v. PYNDAR* (1555), 2 *Dyer*, 132 b, pl. 79; 73 E. R. 289.

Annotation:—*Refd.* *Marshalsea Case* (1612), 10 *Co. Rep.* 68 b.

1030. —.]—*HALL v. JONES*, No. 1022, *ante*.

1031. Penal information will not lie—Effect of judgment.]—A penal information will not lie in a ct. of pie powders, but judgment given on it is not void, but voidable by writ of error.—

Sect. 2.—Courts of pie poudre: Sub-sect. 2. Sect. 3: Sub-sects. 1, 2 & 3, A., B. (a) & (b); sub-sects. 4 & 5.]

WILKINSON v. NETHERSOL (1596), Cro. Eliz. 530; 78 E. R. 777.

1032. Action for slander—Slander of goods.]—HALL v. JONES, No. 1022, *ante*.

1033. — Words spoken within market or fair.]—GOODSON v. DUFFIELD, No. 1024, *ante*.

SECT. 3.—PARTICULAR COURTS.

SUB-SECT. 1.—BARMOTE COURTS OF HIGH PEAK.

1034. Small Barmote Court—Jurisdiction—What miners included—High Peak Mining Customs & Mineral Courts Act, 1851 (c. 94).]—A lessee from a landowner in the High Peak district in the course of working barytes under his lease, interfered with a vein of lead ore belonging, under the Act, to another person. In an action for damages for trespass brought in the Small Barmote Ct. by the owner of the lead ore against the lessee, it was contended that the lessee was not a "miner" within the meaning of sched. 1, art. 16 of the above Act & consequently, that that ct. had no jurisdiction to try the action, but the jury found that he was a "miner," & awarded the owner of the lead ore damages. On an application for a *certiorari*:—*Held*: the mere working of the barytes would not, but the interference with the vein of lead ore would, make the lessee a "miner" within the meaning of the art. & consequently the ct. had jurisdiction.—R. v. SANDERS, [1917] 2 K. B. 390; 86 L. J. K. B. 1316; 117 L. T. 410, D. C.

SUB-SECT. 2.—BRISTOL TOLZEY COURT.

Effect of attachment in.]—See BANKRUPTCY, Vol. IV., p. 358, No. 3345.

SUB-SECT. 3.—CAMBRIDGE UNIVERSITY CHANCELLOR'S COURT.

A. In General.

1035. Court of record.]—Pltf. residing in Cambridge, was apprehended by the proctors & conveyed by them to the Spinning-house, which is the gaol used by the university authorities for confining women "suspected of evil" found within its precincts. Upon arriving at the gaol the V.-C. was sent for, & he heard the statements of the proctors & examined pltf., but not on oath, & finally committed her for fourteen days' imprisonment, but no warrant in writing was made out. An action of trespass was brought against the V.-C. & a verdict was found for pltf. for 40s. with leave for deft. to move to set it aside:—*Held*: (1) as the charter in express terms invested the V.-C. with authority to punish by imprisonment or otherwise as he should think fit, he thereby became invested with judicial authority as a judge of record, & entitled to all the protection attached by law to the judicial office; (2) as all judges of a ct. of record have power to commit to the custody of their officer, *sedente curia*, by oral command, without any warrant made at the time, & as the V.-C. was a judge of a ct. of record, a warrant was not necessary, & a committal in the exercise of this peculiar jurisdiction, where no special method is directed by the statute, although it was not shown to be made under a warrant,

gave no cause of action; (3) the hearing was legal, as there was no express provision in the charter which enabled him to administer an oath, & it was not essential for the purpose that he should do so; (4) the place of confinement appeared to be the accustomed place used for that purpose by the university, & therefore the usage must be presumed to be lawful till the contrary was shown, which had not been done.—KEMP v. NEVILLE (1861), 10 C. B. N. S. 523; 31 L. J. C. P. 158; 4 L. T. 640; 7 Jur. N. S. 913; 142 E. R. 556.

Annotations:—As to (1) *Refd.* Wildes v. Russell (1866), L. R. 1 C. P. 722; Haggard v. Pelicier, [1892] A. C. 61; Everett v. Griffiths, [1920] 3 K. B. 163. As to (2) *Refd.* R. v. Maidenhead Corp., (1882), 8 Q. B. D. 339; *Ex p.* Hopkins (1891), 61 L. J. Q. B. 240. *Generally*, *Mentd.* R. v. Williams (1866), 15 L. T. 290.

Liability of Vice-Chancellor for judicial acts.]—See PUBLIC AUTHORITIES & PUBLIC OFFICERS.

B. Jurisdiction.

(a) In General.

1036. Extent of jurisdiction—Exclusive.]—PRAWNCE v. HODILOU (1581), Ch. Cas. in Ch. 156; 21 E. R. 91.

1037. — Not to be infringed by Court of Chancery.]—The privilege of the University of Cambridge should be maintained, & should not be infringed by the Ct. of Ch.—BYAT v. PICKERING (1634), 1 Rep. Ch. 86; 21 E. R. 515.

1038. — Action brought in High Court—Goods sold & delivered—To president & scholars of college.]—The Chancellor of the Universities of Oxford or Cambridge shall be allowed cognisance of an action brought in the superior ct. against the president & scholars of a college for goods sold & delivered to their use.—MAGDALEN COLLEGE'S CASE (1673), 1 Mod. Rep. 163; 86 E. R. 803.

1039. Publication of pamphlet against established religion.]—The publication of a pamphlet against the established religion in the University of Cambridge is an offence within one of the statutes of the university, & punishable by banishment by the V.-C., assisted by the heads of colleges in the V.-C.'s ct., & though the statute, inflicting that punishment, adds that the party shall be banished from his college, this ct. will not grant a *mandamus* to restore a person, against whom only banishment from the university is pronounced in the above ct.—R. v. CAMBRIDGE UNIVERSITY (1794), 6 Term Rep. 89; 101 E. R. 451.

Annotations:—*Mentd.* *Ex p.* Death (1852), 21 L. J. Q. B. 337; *Pusey v. Jowett* (1863), 1 New Rep. 488.

1040. Servants of university appointed constables under 6 Geo. 4, c. 97—No jurisdiction in respect of acts done in joint character.]—Where servants of the university authorities are also appointed constables under 6 Geo. 4, c. 97, & are sued in respect of anything done in their joint character, the university is not entitled to claim consuance of the suit.—TURNER v. BATES (1817), 10 Q. B. 292; 8 L. T. O. S. 515; 116 E. R. 113.

1041. Distinguished from jurisdiction of Vice-Chancellor & heads of colleges.]—The governing body of a university may lawfully issue a decree that every tradesman with whom a person *in statu pupillari* within the university contracts a debt exceeding £5 shall make the same known to the tutor of such person's college, on pain of being discommuned if he omits doing so, & in case of disobedience, they may enforce such decree by ordering that no person *in statu pupillari* shall deal with the tradesman for a given period. If the Vice-Chancellor, attended, on summons, by the heads of colleges, makes an order to discommune, in pursuance of such decree, this is

not a judicial proceeding which the superior cts. can restrain by prohibition.

Discommuning is only giving a caution to persons *in statu pupillari* not to deal with certain tradesmen. There is no proceeding in the ct. of the V.-C. (LORD CAMPBELL, C.J.).—*Ex p. DEATH* (1852), 18 Q. B. 647; 21 L. J. Q. B. 337; 17 Jur. 112; 118 E. R. 244; *sub nom. Re CAMBRIDGE* (VICE-CHANCELLOR, ETC.), *Ex p. DEATH*, 19 L. T. O. S. 165; 16 J. P. 615.

1042. Woman walking with member of university—Omission of words "for immoral purposes."—A conviction is bad where the charge does not in terms show a legal offence, although the meaning of the charge was understood by the party charged, and was in a form used time out of mind in the ct. before which the party was so charged.

On a motion for a rule *nisi* for a writ of *habeas corpus* & also for a writ of *certiorari* on behalf of one H., who had been arrested at Cambridge by the university constables, & charged before the V.-C. of the university with "walking with a member of the university." This charge was read over to her, & she pleaded "not guilty." Evidence was given as to her being seen walking with a member of the university, & also as to her being a woman of bad character. The V.-C. committed her for fourteen days to the Spinning-house, & the warrant of commitment stated that she had been charged with, & convicted of, "walking with a member of the university." It appeared that the above was a common form adopted in the V.-C.'s Ct. when it was intended to charge a woman with walking with such a member "for immoral purposes," & that for a long time it had been taken to mean such a charge, & that it was intended in this case so to charge & convict H., & so to enter the conviction on the warrant of commitment:—*Held*: (1) the rule should be made absolute; (2) the proceedings in the V.-C.'s Ct. were irregular; (3) applt. had not been charged within the words of the charter as "suspected of evil"; (4) she had been charged with an offence not within the jurisdiction of the V.-C.; (5) she had not been charged with any other offence, nor had the charge been altered or amended, & consequently the conviction was bad.—*Ex p. HOPKINS* (1891), 61 L. J. Q. B. 240; 66 L. T. 53; 56 J. P. 262; 17 Cox, C. C. 144.

Annotation:—Generally, *Mentd. Bingley v. Quest* (1907), 5 L. G. R. 938.

1043. Committal to prison—When jurisdiction attaches.—*KEMP v. NEVILLE*, No. 1035, *ante*.

1044. — Without examination on oath.—*KEMP v. NEVILLE*, No. 1035, *ante*.

1045. — Without written warrant.—*KEMP v. NEVILLE*, No. 1035, *ante*.

1046. — For offence not within jurisdiction.—*Ex p. HOPKINS*, No. 1042, *ante*.

(b) *Manner of claiming.*

1047. Time for claiming—Not after imparlance—In High Court.—The University of Cambridge had a charter granted to them by Elizabeth, whereby *cognitio placitorum*, with exclusive words *non alibi*, etc., was given to the ct. of the V.-C., to proceed *secundum legem et consuetudinem* of the university, in all cases where any of the body are defts. which charter was confirmed by Parliament:—*Held*: after imparlance it was too late to make that claim.—*PERN v. MANNERS* (1713), *Fortes. Rep.* 155; 92 E. R. 800; *sub nom. CAMBRIDGE UNIVERSITY CASE*, 10 Mod. Rep. 125.

Annotation:—*Consd. Welles v. Trahern* (1740), *Willes*, 233.

1048. — — — — ——When either of the universities claims consuance of a cause, it must be claimed

before imparlance. *Qu.*: where an attorney is pltf. whether the university is entitled to consuance of the cause.—*WELLES v. TRAHERN* (1740), *Willes*, 233; 125 E. R. 1147.

Annotation:—*Mentd. Jefferies v. Beart* (1818), 12 Jur. 1003.

1049. — Not before legal notice that franchise entrenched upon.—Two propositions may be laid down. First, before any person is bound to claim consuance, he is intended by law to have had some legal notice of his franchise being entrenched upon. Secondly, in order to bar him from making the claim, there ought to be some laches or default in him, & a time shown, when he might have claimed it sooner, after such legal notice (LORD MANSFIELD, C.J.).—*R. v. AGAR* (1772), 5 Burr. 2820; 98 E. R. 480.

1050. How claimed—Production of charter not required.—On a claim of consuance for the University of Cambridge a warrant of attorney from the university to claim consuance was produced. First the warrant of attorney was read, then the claim, then the charter was put in & the exemplification of the statute which confirmed their privileges.

For the future you need not be at the charge to bring up the charter (PARKER, C.J.).—*NEWTON v. MARTIN* (1714), *Fortes. Rep.* 280; 92 E. R. 852.

1051. — Certificate of Chancellor.—The University of Cambridge claimed consuance, & produced the certificate of the chancellor, that the parties were of the university. Upon the rule to show cause:—*Held*: (1) the claim ought to be entered on a roll & an affidavit to verify the certificate should be produced; (2) the rule would be discharged & it was too late to make a new claim.—*PATERNOSTER v. GRAHAM* (1729), 2 Stra. 810; 1 Ld. Raym. 428; 93 E. R. 864.

Annotations:—*As to* (1) *Refd. Hayes v. Long* (1766), 2 Wils. 310; *Turner v. Bates* (1847), 10 Q. B. 292. *As to* (2) *Refd. Hayes v. Long* (1766), 2 Wils. 310.

1052. — Claim of Vice-Chancellor entered on roll.—A claim by the V.-C. of Cambridge University on behalf of the Chancellor, Masters & Scholars of the university, entered on the roll in due form setting out their jurisdiction under charters confirmed by Act of Parliament, & averring the cause of action arose within the jurisdiction of the university ct. was allowed.—*BROWNE v. RENOARD* (1810), 12 East, 12; 104 E. R. 5.

Annotation:—*Refd. R. v. London Corpn.* (1829), 9 B. & C. 1.

SUB-SECT. 4.—DERBY COURT OF RECORD.

Jurisdiction.—*See* COUNTY COURTS, Vol. XIII., p. 481, No. 311.

SUB-SECT. 5.—LIVERPOOL COURT OF PASSAGE.

See Liverpool Court of Passage Acts, 1893 (c. 37) & 1896 (c. 21) & Rules 1903 & 1909.

1053. Nature—Inferior court.—The Borough Ct. of Liverpool is an inferior, & not a superior ct., & therefore the pendency of an action in that ct. is no answer to an action for the same cause in one of the superior cts.—*LAUGHTON v. TAYLOR* (1840), 6 M. & W. 695; 8 Dowl. 776; 10 L. J. Ex. 57; 151 E. R. 592.

Annotation:—*Refd. London Corpn. v. Cox* (1867), L. R. 2 H. L. 239.

1054. — — — — ——A copy of the notes taken by the judge at the trial of a cause in the Passage Ct. of Liverpool is not needed in order to support a motion in a superior ct. for a new trial, & such

Sect. 3.—Particular courts: Sub-sects. 5 & 6, A., B., C. & D.; sub-sect. 7, A. (a) & (b), B. (a) & (b).]

motion may, according to the established practice, be made by counsel who did not appear in the ct. below.

Although the Passage Ct. of Liverpool is undoubtedly an inferior ct., motions have, by the practice & usage of the ct., been constantly allowed to be made from it to these cts. without the judge's notes (KEATING, J.).—BRIDGE v. DAINE (1873), 20 L. T. 477.

1055. Jurisdiction—Power to make rules of practice—Whether rule ordering security for costs valid.—The assessor of the Liverpool Ct. of Passage made a rule that in frivolous & vexatious actions the registrar should have power to order pltf. to give security for deft.'s costs:—*Held*: Liverpool Ct. of Passage Act, 1836 (c. cxxxv.), s. 4, did not give power to make such a rule, & the rule was invalid.—R. v. LIVERPOOL CORPN. (1887), 18 Q. B. D. 510; 56 L. J. Q. B. 413; 56 L. T. 314; 35 W. R. 475.

1056. — Has not powers under R. S. C., Ord. 14.—The Liverpool Ct. of Passage has not the powers which are given to the High Court by R. S. C., Ord. 14.—*Ex p. SPELMAN*, [1895] 2 Q. B. 174; 73 L. T. 165; 43 W. R. 609; 39 Sol. Jo. 581; 14 R. 499; *sub nom. SPELMAN v. THE EMPIRE, LIVERPOOL, LTD.*, 64 L. J. Q. B. 640; 11 T. L. R. 460, C. A.

See, now. 1903 Rules.

— **In admiralty.**—*See* ADMIRALTY, Vol. I., p. 250, Nos. 1784, 1785.

1057. Practice—Application of rules of law—Judicature Act, 1873 (c. 66), s. 91.—By s. 91 of the above Act, R. S. C., Ord. 55 is applied to proceedings in the Ct. of Passage of the Borough of Liverpool, & a pltf. who recovers a shilling damages in an action for slander tried by a jury in that ct. is entitled to his costs, unless the judge before whom the action was tried has ordered otherwise.—KING v. HAWKESWORTH (1879), 4 Q. B. D. 371; 48 L. J. Q. B. 484; 41 L. T. 411; 27 W. R. 660.

Annotations:—Consd. Ex p. Spelman, [1895] 2 Q. B. 174. *Refd. Poyser v. Minors* (1881), 50 L. J. Q. B. 555.

1058. — Costs—Action for slander—Damages under 40s.—KING v. HAWKESWORTH, No. 1057, *ante*.

— **In admiralty causes.**—*See* ADMIRALTY, Vol. I., p. 250, No. 1786.

1059. Appeal—Lies to Court of Appeal.—Under Liverpool Ct. of Passage Act, 1893 (c. 37), s. 10, an appeal from the judgment in an action in the Ct. of Passage lies to the Ct. of Appeal.—ANDERSON v. DEAN, [1894] 2 Q. B. 222; 63 L. J. Q. B. 668; 70 L. T. 830; 42 W. R. 472; 10 T. L. R. 452; 38 Sol. Jo. 436; 9 R. 418, C. A.

Annotation:—Consd. The Wild Rose, The J. M. Stubbs (1915), 85 L. J. P. 17.

1060. — From interlocutory order—By leave.—Under Liverpool Ct. of Passage Act, 1893 (c. 37), ss. 6 & 10, the presiding judge has power to give leave to appeal to the Ct. of Appeal from an interlocutory order made by him, & that power is not cut down by s. 9 of the Act.—HUNTER v. JACOBSON (1899), 80 L. T. 641; 43 Sol. Jo. 552, C. A.

— **Except in admiralty causes.**—*See* ADMIRALTY, Vol. I., p. 251, Nos. 1788, 1789.

1061. — What points may be raised.—It is not competent for a party moving in a superior ct. from the Ct. of Passage at Liverpool to raise any point on which the assessor did not reserve leave at the trial.—D'ARC v. LONDON & NORTH

WESTERN RY. Co. (1874), as reported in 30 L. T. 763.

— **Procedure—Admiralty appeals.**—*See* ADMIRALTY, Vol. I., p. 250, 251, No. 1787, 1790.

1062. Application for new trial—Lies to Court of Appeal.—An application lies to the Ct. of Appeal for a new trial of an interpleader issue tried in the Liverpool Ct. of Passage as in the case of any other issue there tried.—COATES v. MOORE, [1903] 2 K. B. 140; 72 L. J. K. B. 539; 89 L. T. 8; 51 W. R. 648; 10 Mans. 271, C. A.

1063. — Procedure.—BRIDGE v. DAINE, No. 1054, *ante*.

See, now. R. S. C., Ord. 39, r. 3, & generally, PRACTICE & PROCEDURE.

1064. Removal of action—Certiorari.—At common law a writ of *certiorari* issues as of right to remove an action from an inferior ct. to the High Ct. 5 Vict. c. lli. s. 2, & Liverpool Ct. of Passage Act, 1893 (c. 37), s. 5, do not take away this right, but the former Act merely imposes on its exercise the condition that recognisances shall be given unless the judge dispenses with them. The application for the writ is in time, within s. 3 of the former Act, if it be made within one month of the delivery of the statement of claim.—EDWARDS v. LIVERPOOL CORPN. (1902), 86 L. T. 627; 18 T. L. R. 529; 46 Sol. Jo. 451, D. C.

SUB-SECT. 6.—LONDON.

A. Court of Common Council.

1065. Not a court of record.—The Ct. of Common Council in the City of London is not a ct. of record.—LONDON CORPN. v. ESTWICK (1647), Sty. 35; 82 E. R. 509.

B. Court of Hustings.

1066. Constitution—May be held by six aldermen—In absence of Lord Mayor.—The Ct. of Hustings in London, is the only ct. where a writ of error of a judgment given in the Sheriffs' Ct. lies. The Lord Mayor of London is not the sole Judge of the Ct. of Hustings, for by the constitution of that ct. it may be held by six Aldermen in his absence.—MARKWICK v. LONDON CORPN. (1707), 2 Bro. Parl. Cas. 409; 1 E. R. 1030, H. L.

1067. Jurisdiction—Writ of error lies from sheriff's court.—MARKWICK v. LONDON CORPN., No. 1066, *ante*.

C. Mayor's and City of London Court.

See MAYOR'S COURT, LONDON.

D. City of London Small Debts Court.

1068. Jurisdiction—Appeal in matter of equity.—HARPER v. POLE, No. 817, *ante*.

SUB-SECT. 7.—OXFORD UNIVERSITY VICE-CHANCELLOR'S COURT.

A. Jurisdiction.

(a) In General.

1069. Limited to matters of common law.—PRAT v. TAYLOR (1674), 1 Cas. in Ch. 237; 22 E. R. 778.

1070. ——DRAPER v. CROWTHER (1684), 2 Vent. 362; 86 E. R. 487.

Annotation:—Refd. Glinnett v. Whittingham (1886), 10 Q. B. D. 761.

1071. To stay proceedings—Plaintiff not having appeared.—*Held*: where a party had brought an action at common law against a resident member

of the university, &, when cited to answer in the Chancellor's Ct. for having done so, neglected to appear, the Chancellor's Ct. could not, of its own authority, adjudge that he should stop all proceedings & pay costs, &, on his default, arrest him.—*Re OXFORD UNIVERSITY (CHANCELLOR, ETC.) & TAYLOR* (1841), 1 Q. B. 952; 113 E. R. 1396; *sub nom.* R. v. OXFORD UNIVERSITY, 1 Gal. & Dav. 537; 11 L. J. Q. B. 37; 6 Jur. 319.

Annotation.—*Mentd.* Worthington v. Jeffries (1875), L. R. 10 C. P. 379.

1072. Over townsmen.—*DODWELL v. OXFORD UNIVERSITY*, No. 18, *ante*.

1073. Whether allowed when plaintiff attorney.—*WELLES v. TRAIERN*, No. 1048, *ante*.

1074. Warrant for arrest—Whether valid beyond precincts.—*PERRIN v. WEST*, No. 190, *ante*.

1075. Defendant not resident member of university.—*PERRIN v. WEST*, No. 190, *ante*.

1076. Over graduates.—(1) *Semble*: a power conferred by the university statutes upon the Vice-Chancellor to inflict a *poena* upon a graduate, is *prima facie* a judicial power, & one to be exercised judicially in the Chancellor's Ct.

(2) The Church Discipline Act, 1840 (c. 86), does not debar a university judge from trying a resident clergyman for a breach of university law, notwithstanding such breach may also constitute an ecclesiastical offence. But the ct. will use its discretion as to trying offences over which it possesses, under ancient statutes, a discretionary criminal jurisdiction, when such offences are of a vague character & do not amount to overt acts.

(3) A Regius Professor is subject to the jurisdiction of the Vice-Chancellor.—*PUSEY v. JOWETT* (1863), 1 New Rep. 488.

1077. Over Regius Professor.—*PUSEY v. JOWETT*, No. 1076, *ante*.

1078. Only one advocate practising—Jurisdiction not affected.—(1) A claim of consuance by the University of Oxford must be made at the earliest reasonable opportunity, but need not be before appearance in the action.

(2) A rightful claim of consuance over an action made by the Chancellor of the University of Oxford will not be refused merely because only one advocate practises in the Chancellor's Ct.—*PARSONS v. BAGNALL* (1865), 5 New Rep. 271; *sub nom.* *PARSONS v. WILLOUGHBY DE BROOK*, *Re OXFORD UNIVERSITY CLAIM OF CONSUANCE*, 11 L. T. 628; *sub nom.* *PARSONS v. WILLOUGHBY DE BROKE*, *SAME v. BAGNALL*, *SAME v. RIDEOUT*, *SAME v. BIRCH*, 13 W. R. 315.

(b) *Manner and Time of claiming.*

1079. How privilege proved—Whether by certificate.—*THOMAS v. MOUNSON* (1577), Cary, 66; 21 E. R. 35.

1080. Question for jury—If membership disputed.—In an action if deft. claims his privilege, because he is a scholar of the University of Oxford, of such college or hall, & the parties are at issue whether he be of the college or hall, this shall not be tried by the certificate of the Vice-Chancellor & the principal of the college or hall, but it shall be tried *per pais*.—*MUNDAY v. VAUGHAN* (1594), 21 Vin. Abr. 37.

—*See, also*, Nos. 1101, 1102, *post*.

1081. Time for claiming—Before imparience.—*WELLES v. TRAIERN*, No. 1048, *ante*.

1082. Not necessarily before appearance—Habeas corpus—After arrest.—*PERRIN v. WEST*, No. 190, *ante*.

1083. At earliest opportunity.—*PARSONS v. BAGNALL*, No. 1078, *ante*.

1084. Procedure when privilege allowed.—

EDWARDS v. DENNISON (1749), Dick. 139; 21 E. R. 221, L. C.

B. Ouster of Jurisdiction of High Court.

(a) *In what Actions.*

1085. Exchequer cases.—*CASTLE v. LICHFIELD* (1669), Hard. 505; 145 E. R. 570.

Annotations.—*Refd.* Cheetham v. Crook (1825), M'Cle. & Yo. 307. *Mentd.* Hinton v. Hern (1698), 12 Mod. Rep. 165; Leasingby v. Smith (1769), 2 Wils. 406.

1086. Frank tenement—Under 40s. per annum.—Deft. to a bill in Ch. being cook of Corpus Christi College, Oxford, claimed the privilege of the University which extended to all matters except felony, mayhem & frank tenement. It appeared that the bill was for frank tenement but was under 40s. *per annum*.—*Held*: the bill must be dismissed.—*YATE v. ALLETER* (1583), Ch. Cas. in Ch. 167; 21 E. R. 97.

1087. In ejectment—To recover possession of term.—The University of Oxford cannot claim consuance of an ejectment brought to recover possession of a term.—*HALLEY'S CASE* (1627), Cro. Car. 87; 79 E. R. 677.

1088. Not matters of freehold.—The Chancellor's Ct. in Oxford has no jurisdiction of matters of freehold.—*STEPHENS v. BERRY* (1683), 1 Vern. 212; 1 Eq. Cas. Abr. 136, pl. 7; 23 E. R. 420.

1089. Action brought in High Court—For goods sold & delivered—To president & scholars of college.—*MAGDALEN COLLEGE'S CASE*, No. 1038, *ante*.

1090. Action for trespass—Where scholar party.—Before 14 Hen. 8, the University had the jurisdiction of a leet & exercised it in the Vice-Chancellor's Ct.; but the charter of the 14 Hen. 8 grants them power of trespasses & that over all persons whatsoever, if a scholar be party (*HOLT, C.J.*).—*RUSH v. OXFORD (CHANCELLOR & SCHOLARS)* (1702), 1 Salk. 343; 91 E. R. 300.

1091.—A claim of consuance made by the Vice-Chancellor of the University of Oxford, in the vacancy of the office of Chancellor by death, on behalf of the University, was allowed in a plea of trespass.—*WILLIAMS v. BRICKENDEN* (1809), 11 East, 543; 103 E. R. 1113.

Annotation.—*Refd.* Gmnett v. Whittingham (1886), 16 Q. B. D. 761.

1092. Ecclesiastical offence—By resident clergyman—Effect of Church Discipline Act, 1840 (c. 86).—*PUSEY v. JOWETT*, No. 1076, *ante*.

(b) *As regards What Persons.*

1093. Defendant member of university.—*TEMPLE v. FOSTER* (1577), Cary, 65; 21 E. R. 35.

1094.—*THOMAS v. MOUNSON* (1577), Cary, 66; 21 E. R. 35.

1095.—Deft. to a bill in equity was a graduate of the University of Oxford.—*Held*: the bill should be dismissed as against him & piffs. referred to the jurisdiction of the University.—*PAWLINGE v. HOMFREY* (1579), Ch. Cas. in Ch. 131; 21 E. R. 79.

1096.—Deft. a Master of Arts in Oxford, pleaded his privilege of the University under the seal there, & demanded judgment whether he should be driven to answer contrary to the privilege.—*Held*: the privilege would be allowed, & the attachment discharged.—*COTTON v. MANERING* (1579), Cary, 73; 21 E. R. 39.

1097. President of college.—A bill against defts. one of whom was President of St. John's College, was dismissed by the privilege of the University of Oxford, & piff. left to take his remedy there.—*WISE v. WILLIS* (1582), Ch. Cas. in Ch. 157; 21 E. R. 92.

Sect. 3.—Particular courts: Sub-sect. 7, B. (b); sub-sects. 8, 9, 10, 11, 12 & 13. Part XXIV.]

1098. — Fellow of college.—In a suit in Ch., the privileges of Oxford University were allowed to deft. who was a fellow of New College.—*LYDYARD v. BAYLY* (1583), Ch. Cas. in Ch. 168; 21 E. R. 98.

1099. ——*KENDRICK v. KYNASTON* (1764), 1 Wm. Bl. 454; 96 E. R. 261.

Annotation:—Refd. Leasingby v. Smith (1769), 2 Wils. 406.

1100. — Scholar & resident.—Bill to be relieved against a bond given by pltf.'s father to deft. Deft. pleaded he was a Doctor of Divinity, scholar & resident student in the University of Oxford & that he ought not to be sued but before the chancellor of the University or his deputy:—*Held*: the plea would be overruled.—*WILLIAMS v. ROBERTS* (1673), Cas. temp. Finch, 45; 23 E. R. 24.

1101. ——Bill to have a bond of £100 penalty delivered up, the money being paid. Deft. pleaded he was a privileged person of the University of Oxford, being Doctor of Laws & a resident there, which the Chancellor certified, & demanded consuance of the matter in question, as examinable & to be determined in the ct. held before him, or before the V.-C. his deputy or commissary, & not elsewhere:—*Held*: the plea would be allowed.—*BUSBY v. CROSSE* (1674), Cas. temp. Finch, 162; 23 E. R. 89.

1102. ——Pltf. as administrator of D. sued to have an account of his estate which defts. had got into their possession. Defts. pleaded they were privileged persons & members of the University of Oxford & resident there, which was certified by the Chancellor of the University who demanded consuance of the matter in question:—*Held*: the plea would be allowed.—*POWELL v. HINE* (1677), Cas. temp. Finch, 292; 23 E. R. 160.

1103. — Plaintiff beyond limits of university.—Pltf., who was the proprietor of a circus, & in no way connected with the University of Oxford or resident in the town of Oxford, brought an action against deft. for libels published in several London papers. Deft. was an undergraduate member of Worcester College, Oxford, & resided within the university. The Chancellor of the University of Oxford claimed consuance of the action in the Ct. of the University based upon a charter of Henry VIII. confirmed by Act of Parliament in the reign of Queen Elizabeth:—*Held*: the claim must be allowed, inasmuch as the terms of the charter included deft. even where pltf. lived beyond the limits of the university.—*GINNETT v. WHITTINGHAM* (1886), 16 Q. B. D. 761; 55 L. J. Q. B. 409; 34 W. R. 565; 2 T. L. R. 243.

1104. Only when one party resident scholar.—At time of action.—(1) To give the Ct. of the Chancellor of the University of Oxford jurisdiction, one of the parties must be a scholar resident in the university at the time when action brought.

(2) He ought to be a sole party, & if another be joined with him he cannot have the privilege or benefit of the Charter.

(3) It is not a privilege which may be waived.—*WILCOCKS' CASE* (1628), Het. 27; 124 E. R. 314; *sub nom. WILCOCKS v. BRADELL*, Cro. Car. 73.

1105. One defendant servant of university.—Remaining defendants members.—Claim of consuance by the University of Oxford was allowed in an action of trespass against a Proctor, a Proctor, & the Marshal of the university, though the affidavit of the latter, describing him as of a parish in the suburbs of Oxford, only verified that he then was & had been for the last fourteen

years a common servant of the university called marshal of the university, & that he was sued for an act done by him in discharge of his duty & in obedience to the orders of the other two defts. without stating that he resided within the university, or was matriculated.—*THORNTON v. FORD* (1812), 15 East, 631; 104 E. R. 983.

Annotation:—Refd. Turner v. Bates (1847), 10 Q. B. 292.

1106. Co-defendant not resident.—A plea that the case was within the jurisdiction of the Oxford University Ct. was rejected as one of the defts. was not resident there.—*WHITE v. LOWGHER* (1576), Cary, 55; 21 E. R. 30.

1107. ——*WILCOCKS' CASE*, No. 1104, *ante*.

1108. Party not resident.—Although member.—A claim of consuance was refused to the University of Oxford, as the party, though a member, was not in residence there.—*HAYES v. LONG* (1766), 2 Wils. 310; 95 E. R. 828.

Annotations:—Refd. Leasingby v. Smith (1769), 2 Wils. 406; *Perrin v. West* (1835), 3 Ad. & El. 405; *Turner v. Bates* (1847), 10 Q. B. 292; *Ginnett v. Whittingham* (1886), 16 Q. B. D. 761.

1109. Privilege cannot be waived.—*WILCOCKS' CASE*, No. 1104, *ante*.

SUB-SECT. 8.—PLYMOUTH BOROUGH COURT.

1110. Jurisdiction.—Not over debts less than 40s.]

—The borough ct. of Plymouth has not jurisdiction over debts to a less amount than forty shillings, & the county ct. process does not run into that borough. The inhabitants may therefore sue in the Ct. of K. B. for debts amounting to a less sum than forty shillings.—*NILE v. RILEY* (1824), 2 L. J. O. S. K. B. 154.

SUB-SECT. 9.—PRESTON COURT OF RECORD.

Appeal to King's Bench.—*See* No. 816, *ante*.

SUB-SECT. 10.—SALFORD HUNDRED COURT.

1111. Jurisdiction.—Cause of action arising outside hundred.—Action to recover expenses incurred by pltf. residing in Manchester in attending Central Criminal Ct. in London to give evidence for deft. on a Crown Office subpoena served in Manchester. On an application for a prohibition to the Salford Hundred Ct.:—*Held*: it had no jurisdiction to try the action, as the cause of action did not arise within the hundred.—*WHITEHEAD v. BUTT* (1891), 7 T. L. R. 609.

1112. — "Cause of action"—*Salford Hundred Court of Record Act, 1868* (c. cxxx.), s. 6.—"The cause of action" in the above sect. means the whole cause of action, & not merely the act or default which gives pltf. his cause of complaint.

The effect of sect. 7 of the above Act being to give jurisdiction to the Salford Hundred Ct. in cases where the want of jurisdiction is not pleaded, deft. against whom judgment has been recovered in that ct. in default of appearance & who has consequently not pleaded to the jurisdiction, is not entitled to a writ of prohibition on the ground of want of jurisdiction.—*PAYNE v. HOGG*, [1900] 2 Q. B. 43; 69 L. J. Q. B. 579; 82 L. T. 584; 48 W. R. 417; 16 T. L. R. 298; 44 Sol. Jo. 345, C. A.

See, now, Salford Hundred Ct. Act, 1911 (c. clxxii.).

1113. Objection to jurisdiction.—Special plea.—Ouster of jurisdiction of superior courts.—Salford

Hundred Court of Record Act, 1868 (c. cxxx.), s. 7.]—*Held*: the above sect. did not oust the jurisdiction of the superior cts. to restrain by prohibition, & deft. who was sued in the Salford Ct. for a matter over which that ct. had no jurisdiction, might himself apply to a superior ct. for a writ of prohibition.—*ORAM v. BREAREY* (1877), 2 Ex. D. 346; 46 L. J. Q. B. 481; 36 L. T. 475; 41 J. P. 695; 25 W. R. 695.

Annotations:—*Consd.* *Chadwick v. Ball* (1885), 14 Q. B. D. 855. *Refd.* *Payne v. Hogg*, [1900] 2 Q. B. 43.

1114. — Loss of right to prohibition—Salford Hundred Court of Record Act, 1868 (c. cxxx.), s. 7.]—*Held*: deft., against whom judgment had been recovered in the Salford Hundred Ct., he not having pleaded to the jurisdiction, could not have a writ of prohibition on the ground of want of jurisdiction, inasmuch as the above section under the circumstances conferred jurisdiction on the Salford Hundred Ct.—*Oram v. Brearey* (No. 1113, *ante*) overd.—*CHADWICK v. BALL* (1885), 14 Q. B. D. 855; 54 L. J. Q. B. 396; 52 L. T. 949, C. A.

Annotation:—*Consd.* *Payne v. Hogg*, [1900] 2 Q. B. 43.

1115. — — — — —.]—*PAYNE v. HOGG*, No. 1112, *ante*.

SUB-SECT. 11.—STANNARIES COURT.

See, now, Stannaries Court (Abolition) Act, 1896 (c. 45).

1116. Court of law—Not of equity.]—*TREW-LAWNY v. WILLIAMS* (1704), 2 Vern. 483; 22 E. R. 910.

1117. Jurisdiction—Only matters concerning tin—One party must be tinner.]—The jurisdiction of the Stannaries is only for tin matters & where the persons which sue, or one of them, be a tinner.—*ADAMS v. STANNERIES (LORD WARDEN)* (1633), Cro. Car. 333; 79 E. R. 891.

1118. — In equity—Principles of Court of Chancery.]—The equitable jurisdiction of the Vice-Warden of the Stannaries of Cornwall depends upon the principles of equity, as administered in the High Ct. of Ch. In a case where ejectment lay for a mine:—*Held*: (1) a petition to the Vice-Warden for delivery of possession to pltf., without alleging any impediment to the recovery of the premises in a court of law was bad on demurrer. (2) A petition would not lie simply for an account of mesne profits of a mine, where it was not shown that any difficulty existed in taking the account, or that such account could not be taken as conveniently at law as in equity.—*VICE v. THOMAS* (1842), 4 Y. & C. Ex. 538; 2 Coop. temp. Cott. 122; Smirke's Rep. 1; 47 E. R. 1084.

Annotations:—*As to* (1) *Refd.* *Rogers v. Brenton* (1847), 10

Q. B. 26. *Generally*, *Mentd.* *Haigh v. Jagger* (1845), 2 Coll. 231; *Talbot v. Hope Scott* (1858), 4 K. & J. 96; *Gaved v. Martyn* (1865), 19 C. B. N. S. 732.

1119. — Concurrent with county court.]—Under County Courts Act, 1846 (c. 95), ss. 58, 111, the county ct. has so far concurrent jurisdiction with the Vice Warden's Ct., established for the Stannaries by charter & by 6 & 7 W. 4, c. 100, that a tinner sued in the county ct. cannot object to the jurisdiction on the ground that the cause is one cognisable by the ct. of the Vice Warden, the exemption of the tinner from the county ct. jurisdiction by reason of mere personal privilege being taken away by the above County Cts. Act.—*NEWTON v. NANCARROW* (1850), 15 Q. B. 144; *Rob. L. & W.* 287; 19 L. J. Q. B. 311; 11 J. P. 670; 14 Jur. 911; 117 E. R. 413.

1120. — Not over mine in Devon—On cost-book principle—Jurisdiction of Court of Chancery.]—Where a mine was established in Devon on the cost-book principle, & therefore was not within the Stannary Ct., the Ct. of Ch. assumed jurisdiction over the affairs of the mine.—*ARUNDELL v. ATWELL* (1853), *Tapping on the Cost Book*, 2nd Ed. p. 7.

— Winding up of companies.]—*See* COMPANIES.

1121. Practice—Declaring must allege plaintiff a tinner.]—*REIGNOL v. TAYLOR*, No. 83, *ante*.

1122. Appeal—Requirement as to deposit.]—Notwithstanding that the appellate jurisdiction of the Lord Warden of the Stannaries has, by Jud. Act, 1873 (c. 66), been transferred to the Ct. of Appeal, the requirements of Stannaries Act, 1869 (c. 19), s. 32, as to the deposit by applt. of £20 in the hands of the registrar of the Stannaries Ct. prior to appealing, are still in force.—*Re WEST DEVON GREAT CONSOLS MINE* (1888), 38 Ch. D. 51; 57 L. J. Ch. 850; 58 L. T. 61; 36 W. R. 342; 4 T. L. R. 297, C. A.

Annotations:—*Mentd.* *Morgan v. Bowles*, [1891] 1 Q. B. 236; *Hickman v. Berens* (1895), 12 R. 602; *Kirby v. North British & Mercantile Insec.*, [1896] 2 Q. B. 99; *Darlow v. Shuttleworth*, [1902] 1 K. B. 721.

1123. — To Court of Appeal.]—*Re WEST DEVON GREAT CONSOLS MINE*, No. 1122, *ante*.

See, generally, MINES, MINERALS & QUARRIES.

SUB-SECT. 12.—THETFORD COURT OF RECORD.
See, 152 L. T. Jo. 281.

SUB-SECT. 13.—WELLS COURT OF RECORD.
1124. Corporation compelled to hold—Notwithstanding 200 years disuse—& want of funds.]—*R. v. WELLS CORPN.*, No. 255, *ante*.

Part XXIV.—Manorial Courts.

See COPYHOLDS, Vol. XIII., pp. 32–36.

Part XXV.—Judicial Commissioners.

SECT. 1.—RAILWAY AND CANAL COMMISSION AND RAILWAY RATES TRIBUNAL.

See RAILWAYS & CANALS.

SECT. 2.—LAND TAX COMMISSION.

See LAND TAX.

SECT. 3.—INCOME TAX COMMISSIONERS.

See INCOME TAX.

SECT. 4.—COMMISSIONERS OF SEWERS.

1125. Status—Court of record.—Comrs. of Sewers, being a ct. of record, can order imprisonment for a contempt committed in their presence. —*OLDBERY (INHABITANTS) v. STAFFORD* (1863), 1 Sid. 145; 82 E. R. 1022.

1126. — — — — —.] The price [for timber taken for purpose of constructing & repairing works] is not given by the comrs. individually but is given before them as a ct. of record in which they are bound to act (*DALLAS, C.J.*).

The commission constitutes the comrs. a ct. & gives them every power incident to a ct. of oyer & terminer. They may compel obedience to their orders; they may command the sheriffs, by their mandatory writs, to summon a jury of twelve men for the purpose of inquiry; they are enabled to appoint ministerial officers; they may nominate a collector for the purpose of collecting money & proper officers for hearing & taking an account of the receipts & payments. So that the comrs. themselves do not act ministerially but the officers whom they appoint (*PARK, J.*). — *NEWCASTLE (DUKE) v. CLARK* (1818), 8 Taunt. 602; 2 Moore, C. P. 666; 129 E. R. 518.

Annotations :—*Refd.* *Crossman v. Bristol & South Wales Union Ry.* (1863), 1 Hem. & M. 531. *Mentd.* *Dyson v. Collick* (1822), 5 B. & Ald. 600; *Hollis v. Goldfinch* (1823), 1 B. & C. 205; *Stracey v. Nelson* (1844), 13 L. J. Ex. 97; *Reedie v. L. & N. W. Ry.*, *Hobbit v. L. & N. W. Ry.* (1849), 4 Exch. 244; *Rolls v. St. George, Southwark Vestry* (1880), 49 L. J. Ch. 691.

1127. Jurisdiction—Powers conferred by commission.—*NEWCASTLE (DUKE) v. CLARK*, No. 1126, *ante*.

1128. — — — — — **Area—New Romney Commission.**—The Guildhall & Assembly Rooms in the town of New Romney are not within the area of the jurisdiction of the Comrs. of Sewers of New Romney. — *NEW ROMNEY CORPN. v. NEW ROMNEY SEWERS' COMRS.*, [1892] 1 Q. B. 840; 61 L. J. Q. B. 558; 56 J. P. 756, C. A.

1129. — — — — — **Part of area incorporated into county borough—Power to levy rate.**—By a commission dated Apr. 19, 1858, comrs. were appointed for the lower level of the county of Gloucester, to repair certain defences by the sea coast which were in a bad state of repair, & power was given to them to tax, assess, charge, distrain & punish persons within the area after the quantity of their lands as to the comrs. might seem most convenient. By *Bristol Corpn. Acts*, 1895 (c. clvii.), 1901 (c. cclxiv.), 1902 (c. cxlii.), & 1904 (c. ccxxiii.), the city of Bristol was extended so as to include certain parts of county parishes which were included in the area of the comrs. & over which the comrs. had power to levy rates for drainage

& other purposes :—*Held* : the fact that the lands had been brought within the extended city did not upon the construction of the Acts referred to, take them out of the jurisdiction of the comrs. or exempt them from a tax or rate assessed by the comrs. — *BRISTOL CORPN. v. CANNING (CLERK TO THE COMRS. OF SEWERS FOR THE LOWER LEVEL OF COUNTY OF GLOUCESTER)* (1906), 95 L. T. 183; 70 J. P. 528.

1130. Adjudication—Validity of—Disqualification of commissioner by reason of interest.—A. was a frontager in a level on the Essex shore of the Thames under the jurisdiction of comrs. of sewers. An ancient sea wall protected the level against incursions of the sea. There was evidence proving a prescriptive liability on the frontagers in the level to maintain & repair the portions of this wall respectively fronting their lands. Part of the wall in front of A.'s land was destroyed by an extraordinary storm & high tide. This part of the wall was previously in good repair & in a proper condition to resist the flow of ordinary tides & the force of ordinary storms. The presentment of a jury at a ct. of sewers in 1861 found that the then owner of A.'s land was bound by reason of his tenure to repair a portion of the sea wall fronting the land so as to prevent the influx of the waters. In 1881–82 the comrs. of sewers made orders upon A. as the owner of the land to repair this portion of the wall. One of the comrs. who made the orders was personally interested as an owner of lands within the level :—*Held* : (1) if the comrs. had made the orders under the powers of Land Drainage Act, 1861 (c. 133), s. 33, they must themselves have found as a fact A.'s liability; (2) if they had exercised such a jurisdiction they would have been acting judicially, & in that case the orders would have been invalidated by the fact that one of the comrs. was disqualified by reason of interest. — *FOBBING SEWERS COMRS. v. R.* (1886), 11 App. Cas. 449; 56 L. J. M. C. 1; 34 W. R. 721; 2 T. L. R. 750; *sub nom.* *FOBBING SEWERS COMRS. v. ABBOTT*, 55 L. T. 493; 51 J. P. 227, H. L.; *affg.* S. C. *sub nom.* *R. v. ESSEX SEWERS COMRS.* (1885), 14 Q. B. D. 561, C. A.

Annotations :—*Generally*, *Mentd.* *North v. Walthamstow U. C.* (1898), 67 L. J. Q. B. 972; *Baker v. Parry* (1905), 3 L. G. R. 684.

1131. — — — — — **When final.**—Where comrs. of sewers, acting under the provisions of 57 Geo. 3, c. xxix., formally adjudicate that the acquisition of a particular property is necessary for the performance of any of the duties imposed upon them by the Act, that adjudication is final, if made in the honest exercise of their powers, that is, if the circumstances of the case fairly warrant the adjudication, even though it be to a certain extent mistaken. — *GARD v. SEWERS COMRS. OF LONDON* (1885), 28 Ch. D. 486; 54 L. J. Ch. 698; 52 L. T. 827; 1 T. L. R. 208, C. A.

Annotations :—*Refd.* *Donman v. Westminster Corpn.*, *Cording v. Westminster Corpn.*, [1906] 1 Ch. 464. *Mentd.* *Teuliere v. St. Mary Abbots, Kensington Vestry* (1885), 30 Ch. D. 642; *Lynch v. London City Sewers Comrs.* (1886), 32 Ch. D. 72; *Gordon v. St. Mary Abbots, Kensington Vestry*, [1894] 2 Q. B. 742; *A.-G. v. London Parochial Charities Trustees*, [1896] 1 Ch. 541; *Fernley v. Limehouse Board of Works* (1899), 68 L. J. Ch. 344; *Fernley v. Limehouse Board of Works* (1900), 82 L. T. 524; *Davies v. London City Corpn.*, [1913] 1 Ch. 415; *Clanricarde v. Ireland Congested Districts Board* (1914), 79 J. P. 481; *Conron v. L. C. C.*, [1922] 2 Ch. 283.

1132. Procedure—Presenting jury—Inquiry & evidence.—(1) By 23 Hen. 8, c. 5, the jury, by

whom a presentment is made to comrs. of sewers concerning what lands are within a level & subject to a certain rate, ought to be summoned by the sheriff from the body of the county in pursuance of a precept directed to him from the comrs. for that purpose, & a presentment made by a standing jury, constituted according to ancient usage, originally returned by the sheriff, at the commencement of every new commission of sewers, from certain parishes or districts composed of land owners there, interested in disclaiming the general charges of the level, which jurymen acted for life, unless removed for cause, & only the foreman of whom was summoned by the sheriff on the particular occasion, which foreman thereupon convened the other jurymen, is illegal & void.

(2) The want of jurisdiction of such presenting jury cannot be waived by traversing their presentment, & going to trial before another jury properly returned from the body of the county, by whom such presentment was confirmed.

(3) The presenting jury, after being sworn & charged, must also prosecute their inquiry upon hearing evidence on oath before the comrs. *in curia*, & make their presentment thereon, &

not upon information collected *in pais*, without oath.—*R. v. SOMERSET SEWERS' COMRS.* (1805), 7 East, 71; 3 Smith, K. B. 105; 103 E. R. 28.

Annotations:—*As to* (1) *Distd.* *R. v. Godfrey* (1850), 14 J. P. 590. *Generally*, *Mentd.* *R. v. Warton* (1862), 31 L. J. Q. B. 265.

1133. — — —.]—After a precept had issued to the sheriff to return a sewers presentment jury under Sewers Act, 1833 (c. 22), s. 11, & the sheriff had returned a panel of eighteen, of whom sixteen only attended, the comrs. called on two bystanders, who were eligible but had not been returned, to form part of the jury, & the presentment was actually made by a jury composed of sixteen persons returned by the sheriff, & the two put in by the judge. Subsequently the presentment was tried, & a verdict of guilty returned:—*Held*: the proceedings of the comrs. in naming the supplemental jurors was an irregularity that amounted to no more than a ground for pleading an abatement, & on such a ground the ct. could not quash the presentment after verdict.—*R. v. GODFREY* (1850), 14 J. P. 590.

1134. *Power to commit for contempt of court.*]—*OLDBERY (INHABITANTS) v. STAFFORD*, No. 1125, *ante*.

COURTS-MARTIAL TO CROWN OFFICE.

See VOLUMES XIV. & XV.

CROWN PRACTICE.

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<i>Actions by or against the Crown</i>	<i>See</i> ACTION; CONSTITUTIONAL LAW.	<i>Crown Lands</i>	<i>See</i> CONSTITUTIONAL LAW.
<i>Attorney-General</i>	„ CONSTITUTIONAL LAW.	<i>Crown Rights</i>	„ CONSTITUTIONAL LAW.
<i>Contempt of Crown</i>	„ CONSTITUTIONAL LAW.	<i>King's Bench Division</i>	„ COURTS.
<i>Coroner's Inquisition</i>	„ CORONERS.	<i>Outlawry</i>	„ CRIMINAL LAW AND PROCEDURE.
<i>Corporations</i>	„ CORPORATIONS.	<i>Royal Prerogative</i>	„ CONSTITUTIONAL LAW.
<i>Courts</i>	„ COUNTY COURTS; COURTS.	<i>Writs of Summons</i>	„ PRACTICE AND PROCEDURE.

Part I.—Proceedings on the Revenue Side of the King's Bench Division.

SECT. 1.—LATIN INFORMATIONS.

SUB-SECT. 1.—IN GENERAL.

1. To recover Crown debt of record.]—Arrears of assessed taxes cannot be recovered by information in the nature of a popular action of debt, inasmuch as 5 & 6 Will. 4, c. 20, s. 13, provides that the amount shall be recoverable “as a debt upon record to the King's Majesty.” The proceedings ought to be by *sci. fa.* or extent, or information upon the record itself.—*A.-G. v. SEWELL* (1838), 4 M. & W. 77; 1 Horn & H. 262; 7 L. J. Ex. 245; 150 E. R. 1350.

2. Can only be filed by the Attorney-General.]—It is not competent to the A.-G. of the Duchy of Lancaster to exhibit an information in the

High Ct. of Justice, & the ct. will order an information exhibited by him to be taken off the file on the application of debt. even after answer put in by debt.

Such an information as this can only be filed by the A.-G. of the realm (MATHEW, J.).—*A.-G. OF DUCHY OF LANCASTER v. DEVONSHIRE (DUKE)* (1884), 14 Q. B. D. 195; 54 L. J. Q. B. 271; 33 W. R. 367; 1 T. L. R. 185, D. C.

Annotation:—*Mentd.* A.-G. of Duchy of Lancaster v. L. & N. W. Ry., [1892] 3 Ch. 274.

Right of Attorney-General, *see, generally*, Part X., Sect. 3, *post*.

As to criminal informations, *see* CRIMINAL LAW & PROCEDURE.

SUB-SECT. 2.—INFORMATIONS IN REM.

A. In General.

3. Information of seizure—Form of—Allegation of forfeiture.—An information *in rem* stated that certain officers of customs, after July 9, 1842, the date of the passing of Customs Act, 1842 (c. 47), & before Nov. 2, 1842, the day of filing the information, to wit, on Aug. 30, 1842, at, etc., did seize & arrest to the use of Her Majesty, as forfeited, a large quantity of foreign wines, for that, before Nov. 2, & before Aug. 30, to wit, on Aug. 20, one S., at etc., entered for exportation from Great Britain the large quantity of foreign wines, & entered the same for drawback, with intent to obtain the amount of the drawback payable & allowable by law in respect of goods, etc., of the denomination under which the wines were entered for exportation & drawback; & that after the entry of the wines, & before Nov. 2, & before Aug. 30, to wit, on the day & year last aforesaid, R. C., being the proper officers of customs in that behalf, examined the wines, to see if they were of the value by law required for the drawback; & the officers found, on such examination, that the wines were of less value than the amount of the drawback payable & allowable by law, contrary to the form of the statute, whereby they became & were forfeited. At the trial, it appeared that the entry of the wines for exportation, & the seizure by the officers, in consequence of the entry, took place on Aug. 30. On motion to enter a verdict for debt, on the ground of variance between the proof & the information:—*Held*: there was no variance, for it was not necessary to make a direct allegation in the information that the cause of forfeiture took place before the seizure, & if the allegation that the cause of seizure was before Aug. 30 were omitted, the information would be sufficient.—A.-G. v. CLERC (1844), 12 M. & W. 640; 14 L. J. Ex. 82; 2 L. T. O. S. 371; 8 J. P. 697; 152 E. R. 1355.

—**Practice & procedure on.**—See Sub-sect. 4, D., *post*.

B. Informations of Devenerunt.

4. Nature of.—Information on a *devenerunt* for a parcel of wine expressed the value but not the quantity or kind:—*Held*: the information was bad, though it would be otherwise upon a seizure.

This information is in the nature of a tort.—NAT v. BARTLETT (1710), Park. 278; 145 E. R. 779.

5. —.—Upon an information by way of *devenerunt* for treble value on 8 Anne, c. 7 for goods that came to the hands of debt., knowing they had not paid the duties:—*Held*: (1) if several persons were concerned either in partnership or otherwise, yet the Crown might come against any one of them for the whole penalty, it being in nature of a tort & not a contract, as in cases of tort a subject might come upon any one concerned in the tort; (2) on such an information there was no necessity that the goods should be proved to come actually into his hands, if they came into his power, or into the custody of any agent of his, or to any person by his direction.—A.-G. v. BURGESS (1726), Bunb. 223; 145 E. R. 654.

Annotation:—*As to* (1) *Consd.* R. v. Manning (1739), 2 Com. 616.

PART I. SECT. 1, SUB-SECT. 2.—A.

3 i. Information of seizure—Form of—Allegation of forfeiture.—The first count of an information charged the unlading of goods before due entry, whereby they became forfeited:—*Held*: an averment that the unlading

was to avoid the duties, or a negation of sufferance, were unnecessary.—A.-G. v. BRUNSKILL (1852), 8 U. C. R. 546.—CAN.

a. — Whether barred by statute providing special procedure by customs department.—R. v. MACDONELL (1883),

1 Exch. C. R. 99.—CAN.

PART I. SECT. 1, SUB-SECT. 3.—A.
20 i. General rule.—The information of intrusion is a proceeding directly against the lands.—A.-G. v. WALSH (1832), Hayes, 550.—IR.

6. Against whom proceedings may be taken—Joint act—Several liability.—A.-G. v. BURGESS, No. 5, *ante*.

7. — — — — —.—Though upon a *devenerunt*, which is a criminal prosecution, every person to whose hands the goods come may be charged, yet on a debt, the person to be charged as importer must have such an interest in the goods as to be liable to pay the duties & it will not extend to a mere agent or servant; but if he is jointly interested with another, the Crown may recover the whole against one; as in case of several obligors in a bond the obligee may sue one or all though he can have but one satisfaction. A factor for a person abroad is in this case undoubtedly liable because the Crown cannot get at the principal (*per cur.*).—A.-G. v. WEEKS (1726), Bunb. 223; 145 E. R. 654.

Annotations:—*Refd.* A.-G. v. Thornton (1824), M'Cle. 600. *Mentd.* A.-G. v. Lambirth (1818), 5 Price, 386.

8. — — — — —.—A.-G. v. CALVER (1720), cited in 2 Com. at p. 622; 92 E. R. 1239.

Annotation:—*Refd.* R. v. Manning (1739), 2 Com. 616.

9. — — — — —.—A.-G. v. PALMER (1727), cited in 2 Com. 620; 92 E. R. 1238.

Annotation:—*Consd.* R. v. Manning (1739), 2 Com. 616.

10. — — — — —.—A.-G. v. CARBELL (1732), cited in 2 Com. 621; 92 E. R. 1239.

Annotation:—*Refd.* R. v. Manning (1739), 2 Com. 616.

11. — Persons aiding & assisting.—A.-G. v. SWEETING (1738), cited in 2 Com. 622; 92 E. R. 1236.

Annotation:—*Refd.* R. v. Manning (1739), 2 Com. 616.

12. — — — — —.—In smuggling goods, all present & aiding are principals & equally liable to the whole penalty.—R. v. MANNING (1739), 2 Com. 616; 92 E. R. 1236.

Annotation:—*Mentd.* Burnell v. Hunt (1841), 5 Jur. 650.

13. — Agents.—A.-G. v. PALMER (1727), cited in 2 Com. 620; 92 E. R. 1238.

Annotation:—*Consd.* R. v. Manning (1739), 2 Com. 616.

14. Allegations in—Must be certain & specific—As distinguished from information of seizure.—NAT v. BARTLETT, No. 4, *ante*.

15. — — — — —.—KENNET v. LLOYD (1719), Bunb. 58; 145 E. R. 595.

16. Defence to—Goods not in possession of defendant—Plea of not guilty insufficient.—R. v. JORDAN (1587), 2 Leon. 34; 74 E. R. 336.

17. — — — — —.—R. v. WALLER (1667), Trem. P. C. 678.

18. Possession of defendant—What constitutes—Goods in power of defendant—Or in custody of servant or agent.—A.-G. v. BURGESS, No. 5, *ante*.

19. Form of information.—R. v. MAUNSELL (1595), Co. Ent. 390.

SUB-SECT. 3.—INFORMATIONS IN PERSONAM.

A. Intrusion.

See Exchequer Rules, 1860, rr. 21–38; Limitation Act, 1623 (c. 16).

20. General rule.—An information of intrusion is to prove title for the Crown & is in the nature of an inquisition & not to try the right.—NORRIS v. BUTLER (1581), Sav. 4, pl. 10; 123 E. R. 980.

21. —.—Judgment in an information of

Sect. 1.—Latin informations: Sub-sect. 3, A., B. (a) & (b); sub-sect. 4, A., B. (a), (b) & (c).]

intrusion *pro Rege* is only *quod committantur et capiantur pro fine*, & thereupon goes an injunction for the possession, but there is no judgment *quod recuperet seisinam*, nor does an *habere facias possessionem* issue in such case.—*FRIEND v. RICHMOND (DUKE) (1667)*, Hard. 460; 145 E. R. 547.

22. In respect of what hereditaments—Land & wood.—Information of intrusion was exhibited by S. against A. for intruding on 100 acres of land & 40 acres of wood. A. pleaded not guilty, but a verdict was returned of guilty as to some & not guilty as to remainder. A motion was made in arrest of judgment that the jury's finding was uncertain as to the land on which A. had intruded so that the ct. could not put the Crown in possession:—*Held*: the motion would be refused.—*A.-G. v. AYLEWORTH (1582)*, Sav. 28. pl. 67; 123 E. R. 993.

23. — Timber & wood.—The A.-G. exhibited an information against S., extrix. of H., for testator cutting timber & wood belonging to the Crown:—*Held*: the extrix. could be charged.—*SHERRINGTON'S CASE (1582)*, Sav. 40; 123 E. R. 1000.

Annotations:—*Consd.* Hambley v. Trott (1776), 1 Cowp. 371; Phillips v. Homfray (1883), 24 Ch. D. 439. *Refd.* Baily v. Birtles (1662), T. Raym. 71; Monypenny v. Bristow (1832), 2 Russ. & M. 117.

24. — Seashore.—*A.-G. v. JONES (1862)*, 2 H. & C. 347; 33 L. J. Ex. 249; 6 L. T. 655; 26 J. P. 518; 159 E. R. 144.

25. — Minerals—In Isle of Man.—*A.-G. FOR ISLE OF MAN v. MYLCHREEST (1879)*, 4 App. Cas. 294; 48 L. J. P. C. 36; 40 L. T. 764, P. C. *Annotations*:—*Consd.* Tucker v. Linger (1882), 21 Ch. D. 18. *Refd.* *A.-G. v. Welsh Granite Co. (1887)*, 35 W. R. 617.

—*Royal palaces.*—*See CONSTITUTIONAL LAW*, Vol. XI., pp. 519, 520, Nos. 242, 247.

Practice & procedure.—*See Sub-sect. 4, C., post.*

B. Debt.

(a) In General.

26. Information for duties—To Crown.—Now an information for the duties is nothing more than the King's action of debt, & therefore there was nothing properly of prerogative in that, except merely the form of suing by information instead of the common action of debt (*EYRE, C.B.*).—*CAWTHORNE v. CAMPBELL (1790)*, 1 Anst. 205, n.; 145 E. R. 846.

Annotations:—*Mentd.* Wall v. A.-G. (1823), 11 Price, 643; Siddon v. East (1830), 1 Cr. & J. 12; A.-G. v. Hallett (1816), 15 L. J. Ex. 246; Adams v. Fremantle (1848), 2 Exch. 453; Spooner v. Juddow (1848), 6 Moo. P. C. C. 257; A.-G. v. Constable (1879), 27 W. R. 661; Stanley v. Wild, [1900] 1 Q. B. 256.

27. Information for penalty—In nature of civil proceedings.—I think that the A.-G. is perfectly right when he says that these proceedings for penalties here, are, although partly of a criminal nature, for many purposes to be considered as in the nature of civil actions (*GRAHAM, B.*).—*A.-G. v. FREER (1822)*, 11 Price, 183; 147 E. R. 441.

28. ——*An information for the recovery of penalties is not a criminal, but a penal proceeding, in the nature of a civil action.*—*R. v. SIDDON (1830)*, 9 L. J. O. S. Ex. 7.

29. — Right of appeal.—*An information at the suit of the A.-G. to recover penalties under Parliamentary Oaths Act, 1866 (c. 19), s. 5,*

from a member of Parliament for voting without having taken the oath of allegiance required by that statute, as amended by Promissory Oaths Act, 1868 (c. 72), is not a "criminal cause or matter" within the meaning of Jud. Act, 1873 (c. 66), s. 47, & an appeal may be brought from any order or judgment therein of the High Ct. to the Ct. of Appeal.—*A.-G. v. BRADLAUGH (1885)*, 14 Q. B. D. 667; 51 L. J. Q. B. 205; 52 L. T. 589; 49 J. P. 500; 33 W. R. 673, C. A.

Annotations:—*Refd.* *R. v. Hausmann (1909)*, 73 J. P. 516. *Re Clifford & O'Sullivan, [1921] 2 A. C. 570.*

30. — Not to Court of Criminal Appeal.—*An appeal does not lie to the Ct. of Criminal Appeal from a conviction on an information by the A.-G. on the revenue side of the K. B. Div.*—*R. v. HAUSMANN (1909)*, 73 J. P. 516; 26 T. L. R. 3; 3 Cr. App. Rep. 3, C. C. A.

—*Practice & procedure.*—*See Sub-sect. 4, B., post.*

(b) In respect of What Obligations.

31. Statutory penalties.—*A.-G. v. JEWERS (1726)*, Bunb. 225; 145 E. R. 655.

Annotation:—*Refd.* *A.-G. v. Key (1831)*, 2 Cr. & J. 2.

32. ——*Where there is no appropriation of a statute penalty it is a debt to the Crown & suable for in a ct. of revenue & not by indictment.*—*R. v. MALLAND (1728)*, 2 Stra. 828; 1 Barn. K. B. 108; 93 E. R. 877.

Annotations:—*Consd.* Clarke v. Bradlaugh (1881), 7 Q. B. D. 38. *Refd.* Bradlaugh v. Clarke (1883), 8 App. Cas. 354.

33. ——*ANON. (1733)*, 2 Barn. K. B. 279; 94 E. R. 499.

34. — Divisible between Crown & informer—*Crown may sue for whole—In absence of qui tam suit by informer.*—*When a statute creates a penalty & says that one moiety shall be to the use of the King & the other to a common informer, the King may sue for the whole unless a common informer has commenced a qui tam suit for the penalty. In such a case the King may recover the penalty by an information filed by the A.-G. in this ct.*—*R. v. HYMEN (1798)*, 7 Term Rep. 536; 101 E. R. 1118.

Annotation:—*Consd.* Bradlaugh v. Clarke (1883), 8 App. Cas. 354.

35. — Parliamentary Oaths Act, 1866 (c. 19)—*Action not maintainable by common informer.*—*A penalty incurred under Parliamentary Oaths Act, 1866 (c. 19), s. 5, cannot be recovered in an action by a common informer, but only in a proceeding at the suit of the Crown.*—*BRADLAUGH v. CLARKE (1883)*, 8 App. Cas. 354; 52 L. J. Q. B. 505; 48 L. T. 681; 47 J. P. 405; 31 W. R. 677, II. L.; *reversg. S. C. sub nom. CLARKE v. BRADLAUGH (1881)*, 7 Q. B. D. 38, 61, n., C. A.

Annotations:—*Consd.* Bradlaugh v. Newdegate (1883), 11 Q. B. D. 1; A.-G. v. Bradlaugh (1885), 14 Q. B. D. 667. *Refd.* Dixon v. Farrer (1886), 17 Q. B. D. 658. *Mentd.* Bradlaugh v. Gossett (1884), 12 Q. B. D. 271; Charrington Sells Dale v. Mid. Ry. (1901), 11 Ry. & Can. Tr. Cas. 222; Ranbury v. Bank of Montreal, [1918] A. C. 626; Neville v. London Express Newspaper (1918), 88 L. J. K. B. 282.

—*See Nos. 27-30, ante.*

36. Arrears of taxes.—*A.-G. v. SEWELL, No. 1, ante.*

SUB-SECT. 4.—PRACTICE AND PROCEDURE.

A. In General.

37. Affidavit necessary.—*If an information be filed without affidavit, the ct. may stay proceedings, or order it to be taken off the file.*

24 i. In respect of what hereditaments—Shore of lake.—*Deft. had encroached on a portion of Lake O., near his land, by constructing crib-*

work & piers, upon which he had built a warehouse:—Held: these, being artificial impediments to the waters of the lake or harbour, were upon the

soil of the Crown, & liable to be removed on an information of intrusion.—*A.-G. v. PERRY (1865)*, 15 C. P. 329.—*CAN.*

In prosecutions under penal statutes the person who appears to be informer upon record cannot be a witness.—*WHITEHAM v. JOKEHAM* (1733), Kel. W. 143; 25 E. R. 536.

38. Copy of information—Whether defendant entitled to—Defence in formâ pauperis.]—The ct. has no authority to direct that deft. in an information on the revenue side shall have a copy of the information, unless he defends in formâ pauperis.—*ANON.* (1834), 3 L. J. Ex. 281.

39. Postponement of trial—Absence of material witness.]—The trial of a revenue information was further postponed on the motion of deft. founded on the absence of a material witness, although he had not complied with the terms of a former postponement by paying the costs of the day. Such applications are not *ex gratia*.—*A.-G. v. GATCLIFFE* (1823), 12 Price, 367; 147 E. R. 719.

40. ——— Sufficiency of affidavit in support.]—The affidavit made by deft. in an information by the A.-G. for penalties to ground a motion for postponing the trial on the absence of a witness, must be most minutely & circumstantially particular as to all the matters stated, or it will be considered insufficient to support a rule to show cause granted for that purpose.—*A.-G. v. TYSON* (1822), 11 Price, 229; 147 E. R. 456.

41. ———]—In the case of a revenue information, if the affidavit in support of a motion on the part of the deft., for postponing the trial on the ground of the absence of a material witness, does not state either that the witness is abroad & out of the jurisdiction of the ct., or where he is, or that deponent does not know where the witness is to be found, the ct. will not entertain the application. But the rule will be enlarged to give deft. an opportunity of renewing the application upon an amended affidavit, which should supply the omission of the necessary averments.—*A.-G. v. PHILLIPS* (1824), 13 Price, 522; *M'Cle.* 251; 147 E. R. 1068.

42. ———]—Deft. in an information may apply by motion to the ct. in term time, after notice of trial given, to postpone the trial, on the ground of the absence of a material witness, upon a proper affidavit containing the necessary statements.—*A.-G. v. MOSS* (1824), 13 Price, 258; 117 E. R. 984.

B. Informations of Debt or for Penalties.

(a) Commencement of Proceedings—Writ of *Capias*.

43. Dates from issuing of process—Informers (Limitation of Actions) Act, 1588-1589 (c. 5).]—The commencement of a suit by information by the A.-G. on the part of the Crown, for the recovery of forfeitures under a penal Act of Parliament, must, with reference to the above Act, be taken to be the issuing of process, & not the actual filing of the information.—*A.-G. v. HALL* (1823), 11 Price, 760; 147 E. R. 629.

44. Issue of writ.]—A *capias* issues immediately where oath is first made of the debt.—*R. v. PIXLEY* (1725), Bunb. 202; 145 E. R. 617. *Annotation:—Mentd. R. v. Bingham* (1831), 2 Tyr. 46.

45. — Before filing of information.]—Deft. arrested by a *capias*, as the first process under 3 & 4 Will. 4, c. 53, s. 95, for an offence against the customs laws, is not entitled to be discharged therefrom, although no information has, at the time of the application, been placed upon the files of the ct.—*A.-G. v. REILLY* (1843), 12 M. & W.

217; 13 L. J. Ex. 82; 8 J. P. 643; 152 E. R. 1177; *sub nom. A.-G. v. RILEY*, 1 Dow. & L. 399.

46. — After filing of information—Before entry in book.]—*A.-G. v. RANDALL* (1725), Bunb. 209; 145 E. R. 650.

(b) Against Whom Proceedings may be taken.

47. Joint & several debtors—Several liability.]—*A.-G. v. WEEKS*, No. 7, *ante*.

48. ———]—By the practice of the Ct. of Exch., the A.-G. had not the privilege of suing any one or more persons, jointly, or jointly & severally, indebted to the Crown, at his discretion. The same rule as to parties must be applied in a creditors' suit, between the Crown & persons jointly, & jointly & severally, indebted to the Crown, as between subject & subject.

Qu.: whether, in an information for the payment of legacy duty, all the exors. living, & the representatives of such as may be dead, are necessary parties.—*A.-G. v. HUGHES* (1842), 11 L. J. Ch. 329.

49. ———]—An information for offences under the Prevention of Smuggling Act, 1845 (c. 87), in unshipping & assisting to unship uncustomed goods was filed against several defts. after Customs Consolidation Act, 1853 (c. 107), came into operation, the offence having been committed before that time. All defts. were found guilty, but the Crown subsequently entered a *nolle prosequi* upon all the counts except one, which charged the offence against eight defts. & upon that count entered up judgment against six of the defts. for treble the value of the goods, the judgment being entered against each severally:—*Held*: the judgment must be sustained; it was competent to the A.-G. to enter the *nolle prosequi*; the acquittal of two did not operate as a discharge of all; unshipping & assisting meant one offence; & it was no objection that the judgment was for treble value against each of the six defts. severally.—*RUCK v. A.-G.* (1858), 3 H. & N. 208; 4 Jur. N. S. 167; 157 E. R. 447; *sub nom. A.-G. v. RUCK*, 30 L. T. O. S. 335; 22 J. P. 241; 6 W. R. 283, Ex. Ch.; *affg. S. C. sub nom. A.-G. v. RUCK* (1856), 11 Exch. 763.

50. Not servant or agent—For person abroad.]—*A.-G. v. WEEKS*, No. 7, *ante*.

51. Principal—Though act of evasion committed by agent.]—*A.-G. v. WOODMASS* (1727), Bunb. 247; 145 E. R. 662.

Annotation:—Refd. A.-G. v. Farr (1817), 4 Price, 122.

52. — Collusion between officers of Crown & agent.]—Where goods are obtained from the custom house without payment of duty, owing to collusion between the officers of the Crown & the agent employed by the importer, the latter will be liable to an information at the suit of the Crown to recover the duty thereon, notwithstanding he has paid the amount to the agent & was ignorant of the fraud.—*A.-G. v. ANSTED* (1841), 12 M. & W. 520; 13 L. J. Ex. 101; 2 L. T. O. S. 349; 152 E. R. 1304.

Annotations:—Refd. Dean v. R. (1846), 15 M. & W. 475. *Mentd. Legg v. Boyd* (1845), 14 L. J. C. P. 138.

(c) Pleading.

Defences available against Crown.]—See CONSTITUTIONAL LAW, Vol. XI, pp. 529, 530, Nos. 337-340.

53. Pleading double.]—On hearing of a rule to show cause why deft. should not have leave to

show that the offence was contrary to the form of statute.—*R. v. AUMOND, R. v. EASTON* (1845), 2 U. C. R. 166.—*CAN.*

PART I. SECT. 1. SUB-SECT. 4.—

B. (c).

b. Form of information.]—In an information for a penalty under

Customs Acts, for knowingly harbouring smuggled goods, the particular illegal act, as that the goods were imported without the payment of duty, should be specified, & the information should

Sect. 1.—Latin informations: Sub-sect. 4, B. (c), (d), (e), (f), (g), (h) & (i), C. (a).]

plead doubly:—*Held*: the rule must be discharged, 4 Anne, c. 16, s. 24, not extending to suits where the King was a party unless for debt immediately owing, or revenue.—*R. v. YORK (ARCHBP.)* (1744), Barnes, 353; Willes, 533; 94 E. R. 951.

Annotation:—*Consd. R. v. Caldwell* (1801), For. 57.

54. —.]—Pleading double to information of debt allowed under 4 & 5 Ann. c. 16.—*A.-G. v. SNOW* (1721), Bunb. 96; 145 E. R. 608.

Annotations:—*Reid. A.-G. v. Allgood* (1743), Park. 1; *A.-G. v. Donaldson* (1841), 7 M. & W. 422. *Mentd. R. v. Caldwell* (1801), For. 57.

55. —.]—4 & 5 Ann. c. 16, s. 4, giving power to plead several matters, does not extend to actions at the suit of the King.—*R. v. CALDWELL* (1801), For. 57; 145 E. R. 1112.

See, generally, PLEADING.

(d) Evidence.

56. Admissibility of—Copies of entries in custom-house book—Information to recover penalties.]—In an information against the master of an American vessel, on 48 Geo. 3, c. 56, s. 11, to recover penalties under that statute, copy of entries in custom-house book may be admitted as evidence.—*TOMKINS v. A.-G.* (1813), 1 Dow. 404; 3 E. R. 744, H. L.

57. —.]—Examination of witnesses—Before Queen's remembrancer.]—In an information by the A.-G. for a breach of the revenue laws, the ct. granted a rule to examine witnesses for the Crown before the Queen's Remembrancer; but refused to order that the examination should be received in evidence at the trial.—*A.-G. v. REILLY* (1845), 13 M. & W. 676; 2 Dow. & L. 690; 14 L. J. Ex. 150; 153 E. R. 283.

Annotations:—*Expld. A.-G. v. Bovet* (1846), 3 Dow. & L. 492; *R. v. Upton St. Leonard's* (1847), 10 Q. B. 827.

(e) Computation of Penalties.

See, generally, REVENUE.

58. Assessment of value by jury—Judgment for treble value by judge.]—*A.-G. v. GOLDSTEIN* (1905), *Times*, July 26.

(f) Defective Informations—Amendment.

59. General rule.]—An information at common law may be amended by the ct. *Qu.*: as to an information on a penal statute.—*TURNER'S CASE* (1677), 1 Freem. K. B. 221; 2 Mod. Rep. 144; 89 E. R. 158.

60. —.]—When offence & statute plainly set out—Informalities immaterial.]—An information founded on a particular statute, stated the offence so as to bring it within the Act, & alleged that by reason thereof, having illegally on board foreign spirits, deft.'s boat was forfeited, according to the statute, & deft. being found on the vessel, charged that thereby he had forfeited the sum of £2133 15s. the Comrs. of Customs having, by virtue of the statute, elected to sue for treble the value of the goods, instead of the penalty. It was objected that it did not state the offence to be "against the form," etc.; that it omitted, in stating deft. had forfeited the sum of money, to allege "according to the form," etc.; that it did not aver that the sum sought to be recovered was the treble value of the goods; & that deft.'s name was

omitted in the concluding averment, that the comrs. had elected to sue for the treble value:—*Held*: in a revenue information, where upon the whole record the offence & statute were so plainly set out that the ct. might see that an offence had been committed with reference to the particular statute, the objections did not afford ground for arresting the judgment.—*A.-G. v. RATTENBURY* (1821), 9 Price, 397; 147 E. R. 130.

61. Adding fresh charges—Offences committed after original information—Name of succeeding Attorney-General substituted.]—The ct. refused to discharge a rule, allowing the A.-G. to amend an information for penalties incurred under the excise laws, on payment of costs, as to ten new counts which had been added, charging other offences laid on days long subsequent to those in the original information, & the filing of that proceeding & the issuing of process thereon, & although the name of a succeeding A.-G. had been introduced.—*A.-G. v. KING* (1818), 5 Price, 363; 146 E. R. 634.

62. Error in date.]—On trial of an information for importing brandy by deft.'s testator, there was a special verdict which found that the importation was upon Apr. 10, 1725, but by the minutes it was in 1719 & 1720:—*Held*: it would be permitted to be amended.—*A.-G. v. WHITE* (1730), Bunb. 283; 145 E. R. 675.

63. Misjoinder of defendants—Cured by judgment.]—An information under 8 & 9 Vict., c. 87, charged, in the three first counts, five defts. with several offences on different days, & in the four following counts, it charged four of those defts. together with four others, with similar offences on other days. A verdict having been found for the Crown:—*Held*: no ground for arresting the judgment, for the defect, if any, might be cured by the mode in which the judgment was entered up.—*A.-G. v. RUCK* (1850), 11 Exch. 763; 25 L. J. Ex. 206; 26 L. T. O. S. 274; 20 J. P. 422; 156 E. R. 1039; *affd. sub nom. RUCK v. A.-G.* (1858), 3 H. & N. 208, Ex. Ch.

Right of Attorney-General.]—*See Part X., Sect. 3, sub-sect. 1, post.*

(g) Discharge of Defendant.

64. Delay in prosecution—Lapse of three terms.]—Deft. who has been arrested on a revenue information filed against him & has entered into a recognisance of bail to appear & answer, cannot move to discharge such recognisance on the ground of the A.-G. not having proceeded to trial according to notice till after three clear terms, exclusively, have elapsed after the time for which notice of trial had been given—not after issue joined. Thus a deft. arrested in Michaelmas term having given bail in Dec. & pleaded in Hilary term, & received notice of trial for the subsequent sittings cannot move after Trinity nor until after Michaelmas term.—*A.-G. v. BEAR* (1818), 6 Price, 83; 146 E. R. 748.

65. —.]—Without "effectual proceedings" being taken.]—Where notice of trial of information had been given from time to time from the sittings after Easter term, 1818, till the sittings after Michaelmas, when it was given for the sittings after the next Hilary term, the trial having been postponed for defect of special

PART I. SECT. 1, SUB-SECT. 4.—
B. (e).

c. Assessment of value by registrar.—Upon motion for judgment in default of pleading to an information by the Crown it appeared that the information, while showing that the

Crown was entitled to judgment, did not show the amount for which judgment should be entered, & a reference was made to the registrar to ascertain the amount of the claim.—*R. v. CONNOLLY* (1897), 5 Exch. C. R. 397.—*CAN.*

PART I. SECT. 1, SUB-SECT. 4.—
B. (f).

d. General rule—No amendment when too late to file a new information.]—*A.-G. v. MATHEWS* (1828), 2 Ir. L. Rep. 1st ser., 397.—*IR.*

jurymen, & the cause was not tried on the last occasion, on account of the absence of a material witness for the Crown, who being expected till the last moment, the notice was not then countermanded:—*Held*: this was a sufficient proceeding effectually to prevent the recognisance of bail being vacated, as it might be where the A.-G. had not taken any effectual proceedings for three successive terms.—A.-G. v. FRENCH (1819), 7 Price, 557; 146 E. R. 1060.

66. Illegal arrest.]—The ct. will discharge a prisoner detained in custody under legal process, *capias* on an information for offences against the revenue laws, issued whilst deft. was in gaol under an arrest which was originally illegal & without authority, & they will not impose any terms on deft. on ordering his discharge.

The question really seems to me to be whether we shall permit a man illegally arrested, to be detained under a legal process issued during his detention. It is clear that deft. was originally illegally detained. It would be very dangerous to allow the process of the ct. to be so grossly abused (GRAHAM, B.).—A.-G. v. CASS (1822), 11 Price, 345; 147 E. R. 494.

Annotations:—*Refd.* *Ex p. Scott* (1829), 4 Man. & Ry. K. B. 361; *Hooper v. Lane* (1857), 6 H. L. Cas. 443.

67. —.]—Where deft. remained in custody under a *capias* on an information by the A.-G., executed whilst he was in prison on an arrest made without legal authority, & was therefore illegally detained, the ct. discharged him from such custody.—A.-G. v. DORKINGS (1822), 11 Price, 156; 147 E. R. 433.

Annotations:—*Refd.* A.-G. v. Cass (1822), 11 Price, 345; *Re Van Boven* (1816), 16 L. J. M. C. 4; *Hooper v. Lane* (1857), 6 H. L. Cas. 443.

68. —.]—Where a seaman had been taken from a lugger at sea by the crew of a revenue cutter, & delivered into civil custody, without legal warrant or authority, & whilst in such custody was charged with a *capias* on an information under which he was removed to Newgate by *habeas corpus*, at the instance of the Crown, & committed thence to the Fleet, on motion:—*Held*: he would be discharged unconditionally.—A.-G. v. GOLDER (1823), 12 Price, 335; 147 E. R. 739.

Annotation:—*Refd.* *Hooper v. Lane* (1857), 6 H. L. Cas. 443.

(h) Appeals and New Trial.

69. Right of appeal—To Court of Appeal—Information for penalties in nature of civil proceedings.]—A.-G. v. BRADLAUGH, No. 29, *ante*.

70. —.]—R. v. HAUSMANN, No. 30, *ante*.

71. Right of Crown to new trial—Verdict of jury in wilful contravention of law—Facts admitted.]—The ct. has full power to grant a new trial at the instance of the Crown when the verdict has passed for deft., in an information, for penalties or in a penal action, if it appears that the jury have acted in wilful contravention of the law, as laid down therein by the judge at *nisi prius*, on admitted facts, in the same way that it would have if the judge had erroneously directed them.—A.-G. v. ROGERS (1843), 11 M. & W. 670; 2 Dowl. N. S. 1037; 12 L. J. Ex. 395; 8 J. P. 249; 152 E. R. 974.

Annotations:—*Refd.* *Gough v. Hardman* (1860), 6 Jur. N. S. 402; A.-G. v. SILLON (1863), 2 H. & C. 431.

(i) Other Cases.

72. Necessary parties—Information for pay-

ment of legacy duty—Some executors dead.]—A.-G. v. HUGHES, No. 48, *ante*.

73. Qui tam information—Declaration of statutory qualification of defendant—Sufficiency of.]—In an action *qui tam* on a statute, it is sufficient to say that a person is not qualified, without showing that he had not £100 a year, or any other estate which makes a qualification.—BLUET v. NEEDS (1736), 2 Com. 522; 92 E. R. 1189.

Annotation:—*Mentd.* R. v. Jarvis (1756), 1 Burr. 148.

74. — Prosecuted merely for issue money—Payment of money into court ordered—To abide event of suit.]—If the ct. see reason to suspect that a *qui tam* action is prosecuted merely for the issue money, they will on motion permit it to be paid into ct. to abide the event of the suit.—PARKER v. MACFARLAN (1789), 3 Term Rep. 137; 100 E. R. 496.

75. Several counts — Whether Crown must elect.]—In an information for penalties under the excise acts with various counts charging that deft. had harboured, secreted, & concealed spirits:—*Held*: it was not incumbent on counsel for the Crown at the close of the case to elect on which count he would rely.—A.-G. v. WARREN (1818), 10 L. T. O. S. 445; *sub nom.* A.-G. v. VERNON, 12 J. P. 251.

C. Informations of Intrusion.

(a) In General.

See Exchequer Rules, 1800, rr. 21–38; 21 Jac. 1, c. 14.

76. 21 Jac. 1, c. 14—Object of.]—The object of the above Act is to put deft. litigating with the Crown in the same situation as any other deft., but this statute does not apply in equity, where, in the matter of discovery, the Crown & a subject litigating together are precisely on the same footing as ordinary parties.—A.-G. v. LONDON CORPN. (1850), 2 Mac. & G. 247; 2 H. & Tw. 1; 19 L. J. Ch. 314; 11 L. T. O. S. 501; 14 Jur. 205; 42 E. R. 95, L. C.; *affg.* (1849), 12 Beav. 8.

Annotations:—*Consd.* *Emmerson v. Maddison*, [1906] A. C. 569. *Refd.* A.-G. v. Newcastle-on-Tyne Corpn., [1897] 2 Q. B. 384; A.-G. v. Storey (1912), 107 L. T. 430. *Mentd.* *Smith v. Stair* (1849), 2 H. L. Cas. 807; *Flitcroft v. Fletcher* (1856), 25 L. J. Ex. 94; *Horton v. Bott* (1857), 2 H. & N. 249; A.-G. v. Hammer (1858), 27 L. J. Ch. 837; *London Gas Light Co. v. Chelsea Vestry* (1859), 6 C. B. N. S. 411; *Ingilby v. Shafto* (1863), 33 Beav. 31; *Stoate v. Itaw* (1863), 14 C. B. N. S. 209; *Goodman v. Holroyd* (1864), 15 C. B. N. S. 839; *Towne v. Cocks* (1874), L. R. 9 Exch. 45; *Saunders v. Jones* (1877), 7 Ch. D. 435; *Bewicke v. Graham* (1880), 50 L. J. Q. B. 396; *Marriott v. Chamberlain* (1886), 54 L. T. 714.

77. — Scope of.]—The above Act only regulates procedure, & its effect is that if an information of intrusion is filed & the Crown has been out of possession for twenty years deft. is allowed to retain possession till the Crown has established its title. Where no information has been filed there is nothing to prevent the Crown or its grantee from making a peaceable entry & then holding possession by virtue of title.—EMMERSON v. MADDISON, [1906] A. C. 569; 75 L. J. P. C. 109; 95 L. T. 568; 22 T. L. R. 748, P. C.

78. — Not applicable to suits in equity—Discovery.]—A.-G. v. LONDON CORPN., No. 76, *ante*.

See, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

79. Liability of executrix—Intrusion by testator.]—SHERRINGTON'S CASE, No. 23, *ante*.

Sect. 1.—Latin informations: Sub-sect. 4, C. (b), (c), (d) & (e), D., E. & F. Sect. 2: Sub-sect. 1.]

(b) Choice of Forum and Venue.

80. Right of Crown.]—In an information of intrusion, the Crown may of right lay the venue in any county or have the inquisition taken in a different county from that in which the venue is laid.

The title of the Crown to lands of which it has been out of possession for 20 years may be tried in the information of intrusion itself, & need not be first found by inquest of office, the only effect of 21 Jac. 1, c. 14, being, to throw the onus of proving title in the first instance, in such a case, on the Crown.—*A.-G. v. PARSONS* (1836), 2 M. & W. 23; 5 Dowl. 165; 2 Gale, 227; Tyr. & Gr. 980; 5 L. J. Ex. 243; 6 L. J. Ex. 9; 150 E. R. 652.

Annotations:—Ovord. A.-G. v. Churchill (1841), 9 Dowl. 772. *Refd. Hilton v. Granville* (1847), 2 New Pract. Cas. 262.

81. —.]—In an information of intrusion, the Crown has not the right as of its prerogative to lay the venue in any county or to issue the *venire facias juratores* into a different county from that in which the venue is laid.—*A.-G. v. CHURCHILL* (LORD) (1841), 8 M. & W. 171; 9 Dowl. 772; 10 L. J. Ex. 314; 5 Jur. 803; 151 E. R. 997.

Annotations:—Consd. Hilton v. Granville (1847), 9 L. T. O. S. 171. *Refd. Dixon v. Farrer* (1886), 17 Q. B. D. 658. *Mentd. A.-G. to Prince of Wales v. Crossman* (1866), L. R. 1 Exch. 381.

—.]—*See, generally, CONSTITUTIONAL LAW, Vol. XI., pp. 525–527, Nos. 294–309a.*

(c) Pleading.

82. Crown should demur—Plea of que estate.]—Deft. having pleaded a *que* estate of a term, the A.-G. for the King in the Exchequer traversed the original lease:—*Held*: after verdict against the King upon this issue it was too late to take advantage of this bad plea.—*LEIGH v. HUDSON* (1565), 2 Dyer, 238 b; 73 E. R. 527.

83. Defendant may not plead double.]—Deft. cannot plead several matters to an information of intrusion, by 4 & 5 Ann., c. 16.—*A.-G. v. ALLGOOD* (1743), Park. 1; 145 E. R. 696.

Annotations:—Apld. A.-G. v. Donaldson (1841), 7 M. & W. 422. *Refd. A.-G. v. Donaldson* (1842), 10 M. & W. 117. *Mentd. de Bode v. R.* (1848), 13 Q. B. 361.

84. —.]—The ct. has no authority under 4 & 5 Ann., c. 16, s. 4, to allow deft. to plead several matters in an information of intrusion by the A.-G.—*A.-G. v. DONALDSON* (1841), 7 M. & W. 422; 9 Dowl. 319; 10 L. J. Ex. 139; 5 Jur. 56; 151 E. R. 830.

Annotation:—Mentd. Cooper v. Hawkins (1903), 73 L. J. K. B. 113.

See, generally, PLEADING.

PART I. SECT. 1, SUB-SECT. 4.—
C. (b).

80 i. Right of Crown.]—In an information for an intrusion, the venue may be laid in any district.—*A.-G. v. DOCKSTADER* (1837), 5 O. S. 341.—CAN.

80 ii. — To trial at bar.]—*A.-G. v. WALSH* (1832), Hayes, & Jo. 65.—IR.

PART I. SECT. 1, SUB-SECT. 4.—
C. (c).

g. General issue.]—Deft., in an information of intrusion, may plead the general issue, when the Crown has been out of possession for more than twenty years.—*A.-G. v. D'ARCY* (1830), Hayes, 85.—IR.

h. —.]—The general issue may be pleaded to an information of intrusion, although it contain an averment of the Crown being in possession within twenty years.—*A.-G. v. MITCHELL* (1832), Hayes, 551.—IR.

k. Defendant justifying under third person—Must show title—& traverse Crown title.]—Where deft. justifies under a third person, he must show his own title & that of the person under whom he justifies, & also traverse the title in the Crown.—*R. v. GOULD* (1840), 1 Ont. Dig. 1766.—CAN.

PART I. SECT. 1, SUB-SECT. 4.—
C. (d).

85 i. Onus of proof—On Crown—

(d) Proof of Title.

85. Onus of proof—On Crown—When out of possession for twenty years.]—*A.-G. v. PARSONS*, No. 80, *ante*.

86. — — — Retention of possession by defendant till title established.]—*EMMERSON v. MADISON*, No. 77, *ante*.

(e) Judgment.

87. Form of.]—ANON. (1583), Sav. 49; 123 E. R. 1005.

Annotation:—Mentd. Doe d. Watt v. Morris (1835), 2 Bing. N. C. 189.

88. —.]—*FRIEND v. RICHMOND* (DUKE), No. 21, *ante*.

89. Nature & effect of—Judgment pro Rege.]—*FRIEND v. RICHMOND* (DUKE), No. 21, *ante*.

D. Informations of Seizure—Writ of Appraisement.

See Exchequer Rules, 1860, rr. 51–53, 106, 107, & 1861 Rule; Customs Consolidation Act, 1876 (c. 36), ss. 218 *et seq.*; Inland Revenue Regulation Act, 1890 (c. 21), ss. 21 *et seq.*

90. General rule.]—After a seizure of goods, the regular steps are to file an information, & then take out a writ of appraisement, upon the return of which deft. is to enter his claim, & then may move for a writ of delivery. If prosecutor delays filing an information, or does not sue out a writ of appraisement, deft. upon entering his claim in the book in the office may move for a writ of delivery. Where a seizure is in vacation time, & there is no information filed the term following, if they could have tried it that term, this would be delay to ground a writ of delivery upon.—*JOHNSON v. SOWERS* (1718), Bunb. 30; 145 E. R. 584.

91. Writ of appraisement—Necessity for—Seizure of British & foreign coins.]—Upon an information of seizure of British & foreign coins, there is no occasion for a writ of appraisement or a second proclamation, & judgment may be for the coins themselves.—*A.-G. v. LADE* (1745), Park. 57; 145 E. R. 712.

92. — Must specify goods seized.]—By the Order of Nov. 1, 1715, in a writ of appraisement the species of goods seized should be particularly described.—*HARWOOD v. FAULKE* (1721), Bunb. 89; 145 E. R. 605.

93. — Issue of new writ—Prior valuation incorrect.]—Upon a seizure of a parcel of snuff there issued a writ of appraisement. The appraisers appraised it at 2s. 6d. per pound, which was 1s. per pound more than it was worth, therefore the officer now moved for a new writ of appraisement, for if it was not really worth so much as appraised at the officer must pay the King's moiety according to the appraised value:—*Held*: the ct. would order the appraisers to show

When out of possession for twenty years.]
—*R. v. SINNOTT* (1868), 27 U. C. R. 639.—CAN.

l. — — — Where prior grants by Crown.]—*R. v. COOPER* (1886), 7 N. S. W. L. R. 15; 2 N. S. W. W. N. 59.—AUS.

PART I. SECT. 1, SUB-SECT. 4.—
C. (e).

89 i. Nature & effect of—Judgment pro Rege—Conclusive against defendant.]—*FARWELL v. R.* (1894), 22 S. O. R. 553.—CAN.

m. Whether judgment for writ of amoveas manus.]—*A.-G. v. STANLEY* (1852), 9 U. C. R. 84.—CAN.

cause.—*EVANS v.* — (1719), Bunb. 49; 145 E. R. 591.

94. Amendment of information—Error in date].—*BALDWIN v.* — (1719), Bunb. 49; 145 E. R. 591.

95. — Description of goods seized—Not to make fresh charge].—*EDGEILL v. DECKER* (1728), Bunb. 252; 145 E. R. 604.

96. — Adding additional counts—After plea.]—An information *in rem* may be amended by the Crown, after plea pleaded, by adding additional counts, although a recognisance has been entered into by the bail to pay the costs occasioned by the claim, such recognisance having been entered into before the information filed.—*A.-G. v. SMITH* (1839), 5 M. & W. 372.

E. Informations of Devenement.

See Sect. 1, sub-sect. 2, B., ante.

F. Costs.

97. Follow the event — Unless otherwise ordered.]—*A.-G. v. BLUCHER DE WAHLSTATT* (COUNTRESS) (1864), 3 H. & C. 374, 390.

Annotations:—*Mentd.* Haldane v. Eckford (1869), L. R. 8 Eq. 631; Douglas v. Douglas, Douglas v. Webster (1871), L. R. 12 Eq. 617; Edinburgh Life Assce. Co. v. Lord Advocate, [1910] A. C. 143.

98. Discretion of taxing master—R. S. C., Ord. 65, r. 27 (29).]—The above order is applicable to the costs of settling a special case for the opinion of the ct. in an appeal on the revenue side of the K. B. Div. incurred before the filing of the case.—*MANCHESTER CORPN. v. SUGDEN, GRESHAM LIFE ASSURANCE SOCIETY v. BISHOP*, [1903] 2 K. B. 171; 72 L. J. K. B. 746; 88 L. T. 679; 67 J. P. 317; 51 W. R. 627; 19 T. L. R. 473; 4 Tax Cas. 595, C. A.

Right of the Crown to receive costs.]—See CONSTITUTIONAL LAW, Vol. XI., pp. 531–533, Nos. 349–363.

Liability of the Crown to pay costs.]—See CONSTITUTIONAL LAW, Vol. XI., pp. 533–534, Nos. 364–373.

Taxation & recovery of costs by Crown.]—See CONSTITUTIONAL LAW, Vol. XI., pp. 534–535, Nos. 374–377.

SECT. 2.—EXTENTS.

SUB-SECT. 1.—IN GENERAL.

99. General rule.]—The process of extent issues of common right if well founded.

The surety in a bond to the Crown by a maltster for securing the payment of duties on malt made by him, is not such a debtor to the Crown as is entitled to prosecute an extent in aid; because by the special conditions of such bonds, the duties are not payable till four months after the maltster shall have made entry according to 48 Geo. 3, c. 74, s. 23. It is not necessary that the bond on which the inquisition proceeds should be actually

produced.—*R. v. SLY* (1816), 2 Price, 157; 146 E. R. 53.

100. Nature of—Proceedings at law.]—*Semble*: the proceedings by writ of extent, & all proceedings thereon, interlocutory & final, are proceedings at law.—*WAIL v. A.-G.* (1823), 11 Price, 613; 7 Cl. & Fin. 81, n.; 147 E. R. 591, H. L.

101. Distinguished from *fi. fa.*]—The distinction between an extent & a *fi. fa.* is, that on the *fi. fa.* the sheriff cannot deliver the goods, but must levy, i.e. sell them. On an extent they may be delivered.—*MOORE v. ANDERSON* (1735), Lee temp. Hard. 103; Cunn. 108; 95 E. R. 64.

102. Creates an estate in lands—Not mere charge.]—An extent makes an estate in the land & has all the properties & incidents of & to an estate & does not resemble an interest which is only a charge upon the land.—*DIGHTON v. GREENVIL* (1693), 2 Vent. 321; 80 E. R. 461, Ex. Ch.; *affd.* (1698), Colles, 64, H. L.

Annotation:—*Mentd.* Johns v. Pink, [1900] 1 Ch. 296.

103. Whether assets bound from teste.]—*R. v. WYNN & PARRY* (1719), Bunb. 39; 145 E. R. 587.

104. —.]—A writ of extent binds from the teste.

A parcel made up by a banking house, sealed & addressed to another banking house, containing cash-notes & cheques of the latter & bills of exchange specially endorsed by the former to make up a balance due from them on their general account & deposited on July 3, after the bank was shut, with a woman servant left in the care of the banking house, to be given to the postman in the morning of July 4, who was in the habit of calling for such parcels before banking hours. On a special demurrer to a plea stating these facts & tendering issue on the property:—*Held*: the property was seizable under an extent in aid, tested July 2, returnable Nov. 6, although the inquisition finding the debt due to the debtor of the Crown debtor was not taken till Nov. 4 following, because such circumstances did not amount to a delivery of the parcel of the persons to whom it was addressed or their agent & therefore conferred no right of property. *Aliter* if delivered to the postman.—*R. v. LAMBTON* (1818), 5 Price, 428; 146 E. R. 654.

Annotation:—*Mentd.* Bromage v. Lloyd (1847), 1 Exch. 32.

105. — Debts.]—*A.-G. v. ELWELL*, No. 416, post.

106. —.]—Debts are not bound by the teste of the extent, but only from the caption of the inquisition.

M. was bound as one of the sureties for W. the Receiver General for the county of X., & W. becoming indebted to the Crown an extent issued against M. dated Feb. An inquisition, which was taken thereupon in May following, found G. indebted to M. in Feb. *scilicet die emanationis brevis de extent.*, upon which the ct. was moved to quash the inquisition, because debts were not bound by the teste of the extent, but only a *die captionis inquisition.*:—*Held*: the rule to quash

PART I. SECT. 1, SUB-SECT. 4.—F.

n. Postponing trial.—At request of defendant.]—On putting off the trial of an information for penalties, on the application of def., costs will be imposed in the same manner as in civil cases.—*H. v. IVES* (1831), Dra. 440.—CAN.

PART I. SECT. 2, SUB-SECT. 1.

99.1. General rule.]—A debt whereon to found a writ of extent may be found on inquisition without *viva voce* testimony.—*R. v. REIFFENSTEIN* (1869), 5 P. R. 175.—CAN.

o. Purpose of writ—Enforcement of

Crown's rights.]—The writ of extent is a proper & effectual proceeding for enforcing the rights of the Crown on a bond given by a public official for the proper performance of his duties.—*R. v. SIVELWRIGHT* (1896), 34 N. B. R. 144.—CAN.

p. —.—Crown not estopped by Post Office Act, 1867.]—Post Office Act, 1867, does not take away from the Crown the remedy by extent upon a bond given by a postmaster.—*R. v. McNABB* (1870), 30 U. C. R. 479.—CAN.

108.1. Whether assets bound from

teste.]—A writ of extent was issued on Dec. 18, & delivered to sheriff Dec. 19, & notice given by him to B. a debtor of the Crown's debtor directed him not to pay over any moneys to his creditor. The inquisition began Dec. 23. On that day, before the proceedings commenced, B. paid what he owed to agents of his creditor:—*Held*: although the money had been paid before the inquisition began, still the writ would prevail, for the inquisition as a judicial act would take effect from the earliest moment of the day on which it began.—*R. v. HUSTON* (1863), 13 C. P. 488.—CAN.

Sect. 2.—Extents: Sub-sects. 1, 2 & 3, A., B., C., D. & E.]

the inquisition would be made absolute.—*R. v. GREEN* (1729), Bunb. 265; 145 E. R. 668.

107. ———.]—*R. v. GLENNY*, No. 158, *post*.

108. ———.]—*LAKEMAN v. MCADAM*, No. 220, *post*.

Priority of immediate extents according to teste.]

—See Sub-sect. 2, *post*.

109. Numerous small debts—Receiver appointed.]—If, upon an extent to find debts, a great number of small ones are found a receiver is appointed to save expense of a great number of extents.—*R. v. ALLEN* (1730), Bunb. 293; 145 E. R. 678.

110. Issue of process on dormant extent—Must be moved for.]—When an extent has been long dormant, process upon it must be moved for.—*R. v. ROBINSON* (1720), Bunb. 62; 145 E. R. 596.

111. Production of writ on motion.]—R. v. MALLET, No. 130, *post*.

112. Amendment of writ—Blank for day of month—Omission supplied after return.]—The ct. on motion ordered an amendment of a writ of extent issued to find debts, to be made by inserting therein the word "second," being the day of the month on which the extent in fact issued, & on which the fiat bore date, a blank having been left in the process for the day of the month, which was not supplied, nor was the omission observed till after the inquisition taken thereon had been returned into ct.—*R. v. ATTWOOD* (1821), 9 Price, 483; 147 E. R. 158.

113. Discharge of Crown debt by surety—Order to put surety in Crown's place—Not absolute in first instance.]—Where the surety of a Crown debtor has paid the debt of his principal, an order that he shall be placed in the situation of the Crown, & a writ of extent be put in force in his behalf, is not absolute in the first instance.—*R. v. ROBINSON* (1855), 1 H. & N. 275, n.; 156 E. R. 1207.

114. ——— Though notice of motion served on principal & Crown.]—Where the surety of a Crown debtor has paid the debt of his principal, an order that he shall be placed in the situation of the Crown, & a writ of extent be put in force in his behalf, is not absolute in the first instance, though notice of motion has been served on the principal & the Crown, & no one appears to oppose the application.—*R. v. SALTER* (1856), 1 H. & N. 274; 156 E. R. 1207.

SUB-SECT. 2.—PRIORITIES.

115. Immediate extents — Inter se — Preferred according to teste.]—Immediate extents for the Crown, finding the same goods found upon a former extent in aid, shall be preferred according to the teste & before extents in aid.—*R. v. QUASH* (1713), Park. 281; 145 E. R. 780.

Annotation:—Reid. R. v. Blatchford (1794), 1 Anst. 162.

116. ——— Preferred to extent in aid.]—R. v. QUASH, No. 115, *ante*.

117. ———.]—R. v. BOWDAGE, No. 118, *post*.

118. Second immediate extent—When preferred to prior extent.]—An immediate extent shall be preferred to an extent in aid, & a second immediate extent, upon which evidence was offered to find the goods seized in aid, shall be preferred to a prior immediate extent, not offering such evidence.—*R. v. BOWDAGE* (1717), Park. 282; 145 E. R. 780.

119. Judgment recovered by subject—Partly

executed—Preferred to extent sued out after judgment.]—A judgment recovered by a subject, though not completely executed, shall be preferred to the King's extent, sued out posterior to the judgment.—*UPPOM v. SUMNER* (1779), 2 Wm. Bl. 1294; 96 E. R. 758.

Annotations:—Consd. Rorke v. Dayrell (1791), 4 Term Rep. 402. *Obtd. R. v. Wells* (1807), 16 East, 278. *Apprvd. R. v. Giles* (1820), 8 Price, 293. *Consd. Giles v. Grover* (1832), 9 Bing. 128. *Reid. Thurston v. Mills* (1812), 16 East, 254; *R. v. Sloper & Allen* (1818), 6 Price, 114. *Mentd. Re Henley* (1878), 9 Ch. D. 469.

Priority of Crown debts generally, *see* CONSTITUTIONAL LAW, Vol. XI., pp. 581, 582, Nos. 830–836; *BANKRUPTCY & INSOLVENCY*, Vol. V., p. 828, Nos. 7029, 7030, 7032.

Right of Crown to seize goods—Already seized by subject under fi. fa. or as distress.]—See Sub-sect. 3, H. (e), *post*.

Subject to lien.]—See Sub-sect. 3, H. (f), *post*.

Crown seizing assigned stock under writ of extent.]—See CHOSSES IN ACTION, Vol. VIII., p. 473, No. 438.

SUB-SECT. 3.—EXTENTS IN CHIEF IN FIRST DEGREE.

A. Against Whom issued.

120. Bankers—Crown moneys paid into private account—Privy of banker.]—A tax collector was accustomed to pay moneys received on account of taxes to R. who paid them into his banker's to his private account, with knowledge of the banker that they were blended with the moneys of R. The banker having become insolvent:—*Held*: an extent in chief might issue against him for the recovery of the Crown moneys, the amount being a question for a jury.—*R. v. WARD* (1836), 2 Exch. 301, n.; 154 E. R. 507.

Annotation:—Fold. R. West London Commercial Bank (1888), 38 Ch. D. 364.

121. ———.]—Letter receivers were in the habit, with the sanction of the Postmaster-General, of paying money received on account of the Post Office into a bank to their private account, together with their own money, & of drawing cheques both for their own purposes & for payment to the Post Office. The bank had notice that their customers were letter receivers, & drew cheques for Post Office purposes. The bank having gone into liquidation:—*Held*: the Postmaster-General, on behalf of the Crown, was entitled to payment in priority over other creditors of the bank of the balance due upon the letter receivers' accounts in respect of Post Office money.—*Re WEST LONDON COMMERCIAL BANK* (1888), 38 Ch. D. 364; 57 L. J. Ch. 925; 59 L. T. 296; 4 T. L. R. 446.

122. ——— Interest due.]—An extent in chief may issue against a banker for the recovery of interest allowed by him on the half-yearly balance of a tax collector's account, in which his own & the Crown moneys are blended together. Also to recover the amount of a banker's promissory note in the hands of a tax collector, & received by him in payment of taxes.—*R. v. ADAMS* (1848), 2 Exch. 299; 154 E. R. 506.

Annotation:—Consd. R. West London Commercial Bank (1888), 38 Ch. D. 364.

123. ——— On promissory note in hands of tax collector—Received in payment of taxes.]—R. v. ADAMS, No. 122, *ante*.

124. Agent of company collecting duties—Though company also liable to Crown.]—An extent lies against the insolvent agent of an insurance co.

where it is found on inquisition that he has received a sum due to the Crown for insurance duties through the co. be also liable to the Crown.—*R. v. WRANGHAM* (1831), 1 Cr. & J. 408; 1 Tyr. 383; 9 L. J. O. S. Ex. 124; 148 E. R. 1481.

Annotation.—*Consd. Re West London Commercial Bank* (1888), 38 Ch. D. 364.

Priority of Crown debts.—*See, generally, CONSTITUTIONAL LAW, Vol. XI., pp. 581, 582, Nos. 830–836.*

Right of Crown to seize goods taken in execution, *see* Sub-sect. 3, H. (e), *post*.

B. Affidavit of Debt and Danger.

125. Necessity for—Bond conditioned to do collateral thing.—*R. v. MOSELEY* (1667), *West's Law of Extents*, 325.

126. Contents of—Must state facts—Mere allegation of insolvency insufficient.—*R. v. RIPPON*, No. 232, *post*.

127. — Positive allegation—Breach of bond.—An affidavit for an immediate extent in chief against a bond debtor to the Crown, should contain a distinct, positive & unequivocal allegation of a breach of the bond.

Where the allegation of the breach in the affidavit was ambiguous, an extent issued against one of the obligors in a bond to the Crown was set aside.—*R. v. MARSH* (1824), *M'Cle.* 688; 13 Price, 826; 148 E. R. 289.

128. — Must allege that debtor insolvent—Facts upon which allegations based.—The affidavit upon which a writ of extent is obtained must not only allege that the debtor to the Crown is insolvent, but must set out the facts upon which that allegation is based.

A writ of extent was obtained upon an affidavit which did not contain those essential allegations:—*Held*: the ct. would set the writ aside.—*R. v. PRIDGON*, [1910] 2 K. B. 543; 79 L. J. K. B. 805; 103 L. T. 539; 26 T. L. R. 570; 54 Sol. Jo. 617.

129. — Extent against surety.—*R. v. MARSH*, No. 127, *ante*.

Insufficiency of—As ground for setting aside.—*See* Sub-sect. 3, K. (b), *post*.

C. Fiat.

See Crown Suits, etc. Act, 1865 (c. 104), s. 47.

D. Issue of Writ.

See, now, Exchequer Rules 1860, rr. 1, 48.

130. Inquisition & fiat eight years old.—The ct. will not entertain a motion on a case of extent, without having the writ before them.

If two writs of extent are issued, one for a joint debt & the other for a separate debt, in the same sum, on inquisitions finding a joint debt & a separate debt, in different sums, the ct. will not set them both aside, on the ground of the irregularity of one of them, though, confessedly, a mistake, but they will support that which can be shown to be correct.

An extent may be issued on an inquisition & fiat eight years old, & no new affidavit or fiat is requisite, nor any proceeding, by *sci. fa.* or otherwise, necessary to revive such extent.—*R. v. MALLETT* (1816), 1 Price, 395; 145 E. R. 1441.

131. Cannot be antedated.—An extent cannot be antedated but must bear teste at the day it issues.—*R. v. MANN* (1727), 2 Stra. 719; *Bunb.* 164; 93 E. R. 826.

Annotations.—*Mentd. A.-G. v. Allgood* (1743), *Park.* 1; *R. v. Cotton* (1751), *Park.* 112; *A.-G. v. Hines* (1758), *Park.* 182; *Johnson v. Smith* (1760), 2 Burr. 950; *Magrath v. Hardy* (1838), 4 Bing. N. C. 782.

132. ——A first extent is not allowed to be tested of the date of a fiat issued two years previously.—*R. v. MABERLEY* (1834), 2 Cr. & M. 537; 2 Dowl. 383; 4 Tyr. 345; 3 L. J. Ex. 154; 149 E. R. 874.

133. Whether second writ will issue—Bearing teste of former writ.—A second extent tested after an assignment under a commission of bkpcy., & all proceedings thereon, were quashed & set aside, but liberty given to move for a new extent of the same teste as the first, which was antecedent to the assignment, upon notice of motion.—*R. v. GIBSON* (1743), *Park.* 34; 145 E. R. 706.

134. — On ground of further indebtedness—& subsequent discovery of property.—The ct. will not grant a new writ of extent of the date of a former tested several years before on the ground that debt. has been since found to have been further indebted to the Crown, & to have had, at the time of issuing the first extent, property not then known to belong to him, & though his goods & chattels seized & sold under that writ produced only so much as would satisfy but a very small part of the Crown's original debt, but a new writ of present teste should be issued, which may be done at any time on application to a baron, where, while the Crown debt be unsatisfied, debt. becomes possessed of newly acquired property.—*R. v. HARVEY* (1819), 7 Price, 238; 146 E. R. 959.

135. — To obtain payment of bill of exchange—Omission in inquisition under first writ.—*R. v. BRUCE* (1819), *Manning's Exchequer Practice* 27, n.

Annotation.—*Distd. R. v. Maberley* (1834), 2 Cr. & M. 537.
Arrest under writ—Whether Crown bound by statutes.—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 34, Nos. 280–286; STATUTES.

E. The Inquisition.

136. Necessity for.—In debt for rent on a lease taken by extent upon a statute, the declaration must state the inquisition returned by the sheriff.—*GARRAWAY v. HARRINGTON* (1620), *Cro. Jac.* 569; 79 E. R. 487, *Ex. Ch.*; *revsg. S. C. sub nom. HARRINGTON v. GARRAWAY* (1618), *Cro. Jac.* 477.

137. Not ex parte proceeding.—The inquisition to find debts etc. on an extent, is not wholly an *ex p.* proceeding; & a claimant of property in the goods inquired of, may assert his claim before the sheriff, & put material questions to witnesses examined by him on the part of prosecutor, in the way of cross-examination to show that the goods belong to him, & if the sheriff refuse to permit such interrogatories to be put the ct. will set aside the extent & inquisition.—*R. v. BICKLEY* (1817), 3 Price, 454; 146 E. R. 319.
Annotation.—*Reid. R. v. Rawlings* (1823), 12 Price, 834.

See Extent Procedure Rules 1888, r. 18.

138. Right of third party—To show title to goods.—Upon taking an inquisition upon an

PART I. SECT. 2, SUB-SECT. 3.—B.

a. Sufficiency of—Must satisfy judge of danger.—An affidavit of danger is sufficient if it satisfy the judge, to whom the application for a fiat for a writ of extent is made, that there is danger that the debt will be lost if immediate remedy is not granted.—

R. v. REIFFENSTEIN (1869), 5 P. R. 175.—CAN.

PART I. SECT. 2, SUB-SECT. 3.—D.

134 i. Whether second writ will issue—Bearing teste of former writ—Subsequent discovery of property.—*R. v. MERRIGOLD* (1861), 7 U. C. L. J. O. S. 18.—CAN.

f. — Former writ set aside.]

—A writ of extent was set aside, & it was ordered that another writ might issue, tested as of the date of the former writ:—*Held*: the order was unobjectionable.—*R. v. McNABB* (1870), 30 U. C. R. 479.—CAN.

Sect. 2.—Extents: Sub-sect. 3, E., F., G. & H. (a), (b), (c), (d) & (e).]

extent, a stranger has a right to prove his property in goods.—*R. v. BULLEY & BLOMMART* (1727), *Bunb.* 233; 145 E. R. 657.

Annotations:—*Consd.* *R. v. Bickley* (1817), 3 Price, 454. *Refd.* *R. v. Rawlings* (1823), 12 Price, 834.

139. ——— Examination of witnesses.]—*R. v. BICKLEY*, No. 137, *ante*.

140. Third party claimant—Must show title in himself.]—Parties claiming goods which have been found by inquisition to be the property of a deft. under an extent, must show title in themselves, & cannot, unless that title be admitted on the record, object on demurrer to the proceedings upon the extent.—*R. v. SOULBY* (1827), 1 Y. & J. 249; 148 E. R. 664.

141. Witnesses—Enforcement of attendance.]—An attachment granted against a person refusing to be examined for the Crown upon an execution of an extent.—*R. v. NEWEL* (1707), *Park.* 269; 145 E. R. 777.

142. ———.]—Witnesses not attending the execution of an extent, a new one was ordered & they were ordered to attend the execution of it.—*R. v. WOOD* (1708), *Park.* 271; 145 E. R. 777.

143. Sufficiency of evidence—Affidavit.]—An inquisition, taken at the suit of the Crown for the purpose of issuing a writ of immediate extent, is not invalid on the ground that the only evidence before the jury consisted of an affidavit.—*R. v. RYLE* (1841), 9 M. & W. 227; 1 Dowl. N. S. 431; 11 L. J. Ex. 234; 6 Jur. 238; 152 E. R. 96.

Annotations:—*Mentd.* *A.-G. v. Briant* (1846), 15 M. & W. 169; *Beaufort v. Crawshaw* (1866), L. R. 1 C. P. 699.

144. Finding of—Must state conclusion arrived at—Not be merely argumentative.]—*R. v. SHERWOOD*, No. 207, *post*.

Setting aside defective extents.]—*See* Sub-sect. 5, F., *post*.

F. The Return.

145. Whether amendable.]—*R. v. WARD* (1732), *Bunb.* 323; 145 E. R. 688.

146. Can be made in vacation.]—Writs of extent are returnable in vacation under Exchequer Ct. Act, 1842 (c. 86), s. 8.—*R. v. RENTON* (1848), 2 Exch. 216; 17 L. J. Ex. 204; 11 L. T. O. S. 130; 13 J. P. 697; 154 E. R. 216.

G. Melius Inquirendum.

147. When ordered—Assignment to creditors before teste of extent—Return of nulla bona.]—A Crown debtor, before the teste of a writ of extent, assigned his property to trustees for the benefit of creditors, & upon that a fiat in bkpcy. issued against him. An inquisition having been taken, in which the sheriff returned that the debtor had no goods:—*Held*: a writ of *melius inquirendum* would be directed in order that the facts of the assignment & bkpcy. might be found by the inquisition.—*R. v. JOBLING* (1849), 4 Exch. 483; 19 L. J. Ex. 14; 14 L. T. O. S. 205; 13 J. P. Jo. 764; 154 E. R. 1303.

As to inquisitions of escheat.]—*See* No. 459, *post*.

H. What may be seized under.

(a) In General.

148. Defendant's body—Land & goods.]—At the common law, the body, the land, & the goods

of the accountant or the King's debtor are liable to the King's execution, for *thesaurus regis est pacis vinculum et bellorum nervi*, & therefore, the law gives the King full remedy for it.—*HARBERT'S CASE* (1584), 3 Co. Rep. 11 b; 76 E. R. 647.

Annotations:—*Consd.* *Giles v. Grover* (1832), 9 Bing. 128. *Refd.* *Coke's Case* (1623), *Gudb.* 289; *Galton v. Hancock* (1743), 2 Atk. 427; *R. v. Curle* (1750), *Park.* 95. *Mentd.* *Ceill's Case* (1597), 7 Co. Rep. 18 b; *Garnon's Case* (1598), 5 Co. Rep. 88 a; *Rooke's Case* (1598), 5 Co. Rep. 99 b; *Drury's Case* (1610), 8 Co. Rep. 141 b; *Waldron v. Vickers* (1622), *Palm.* 283; *R. v. Hampden* (1637), 3 State Tr. 825; *Fowle v. Dogle* (1674), *Freem. K. B.* 157; *R. v. Baden* (1694), *Show.* 74; *Bankers Case* (1695), *Skin.* 601; *Lane v. Cotton* (1700), 1 Com. 100; *Kent v. Kent* (1734), *Kel. W.* 196; *Stilleman v. Ashdown* (1743), *Amb.* 13; *Dyke v. Sweeting* (1745), *Willes*, 585; *R. v. Cotton* (1751), *Park.* 112; *Deering v. Winchelsea* (1800), 2 Bos. & P. 270; *Cassidy v. Stewart* (1841), 2 Scott. N. R. 432; *Hunter v. Hunt* (1845), 1 C. B. 300; *Wolmershausen v. Gullick*, [1893] 2 Ch. 514; *Ruabon S.S. Co. v. London Assoc.*, [1900] A. C. 6; *Re Darby's Estate*, *Rendall v. Darby*, [1907] 2 Ch. 465.

149. ———.]—*R. v. COWING* (1877), *Robertson's Civil Proceedings by & against the Crown*, 194, 398.

Seizure under extents in chief in second & subsequent degrees.]—*See* Sub-sect. 4, *post*.

Seizure under extents in aid.]—*See* Sub-sect. 5, E., *post*.

(b) Lands.

150. General rule.]—The lands of every person who has received money belonging to the Crown, or for which he is an accountant to the Crown, are liable to an extent under 13 Eliz., c. 4 (*MANSFIELD, C.J.*), & at common law also (*HEATH, J.*).—*WILDE v. FORT* (1812), 4 Taunt. 334; 128 E. R. 359.

Annotations:—*Mentd.* *Barrymore v. Ellis* (1836), 8 Sim. 1; *Howe v. Smith* (1884), 27 Ch. D. 89; *Stickney v. Keeble*, [1915] A. C. 386.

151. ———.]—A person employed in the service of the Crown, as Deputy Commissary General to the forces abroad, & Assistant Commissary in the islands of Guernsey & Alderney, & employed in the negotiation of Bank of England notes, received from the Paymaster-General of the forces, & of bills of exchange received from the treasury on account of the public service, having also received specie on the same account, is accountable with the Crown, & is, as such accountant, within 13 Eliz., c. 4, s. 1; & his lands, of which he was seized at any time during the period of his accountability, are bound by his engagement with the public, & subjected to the prerogative process for security & payment of the balance ultimately declared against him.

An extent to find debts had been issued against such a person, & an inquisition taken thereon:—*Held*: such proceedings were no objection to a second extent & inquisition against the same property, on a prior claim.—*R. v. RAWLINGS* (1823), 12 Price, 834; 147 E. R. 891.

152. ———.]—When a man has a substantial estate *per cursum scaccarii*, the Crown has a right of taking it under an extent.—*R. v. ELLIS* (1851), as reported in 18 L. T. O. S. 7; 15 Jur. 917, Ex. Ch.

153. Under agreement for sale—Part of purchase-money paid—Conveyance not executed.]—Deft. had entered into an agreement for sale of his estate, & had received part of his purchase-money. Afterwards an extent issued:—*Held*: as deft. had not executed any conveyance the fee was in him, & therefore the agreement had no operation

PART I. SECT. 2, SUB-SECT. 3.— H. (a).

s. Only property of debtor at time of issue of writ.]—*CLARKSON v. A.-G.*

OF CANADA (1888), 15 O. R. 632; 16 A. R. 202.—*CAN.*

t. ——— Not property assigned before that.]—If debtor has assigned his property before issue of the writ,

the Crown can realise nothing under it in respect of the *res*.—*R. v. THE CITY OF WINDSOR, SYMES v. THE CITY OF WINDSOR* (1896), 5 Exch. O. R. 223.—*CAN.*

against the extent.—*R. v. SNOW* (circa 1804), 1 Price, 220, n; 145 E. R. 1382.

154. Subject to mortgage term—Voluntary settlement after bond to Crown.]—D., by articles, in consideration of his intended marriage, bearing date in 1796, covenanted to settle certain lands, to be purchased with a certain sum of money, to uses, in strict settlement. In 1808 he entered into bonds to the Crown. In 1812 he purchased lands in fee, & a mortgage term was assigned to a trustee to attend the inheritance. The estate was then settled, in strict settlement, to the uses declared by the articles under which D. himself took only a life interest:—*Held*: the term did not protect the inheritance of the fee against the Crown's debt due from D. on the bonds, the settlement being voluntary, & the particular estate not being specifically bound by the deed of 1796.—*R. v. ST. JOHN* (1816), 2 Price, 317; 146 E. R. 109.

155. Not copyholds.]—*R. v. LISLE* (LORD) (1625), cited Park. 195; 145 E. R. 754.
Annotation:—*Refd.* *R. v. Budd* (1758), Park. 190.

(c) *Choses in Action.*

156. Bond.]—*R. v. CHAPMAN* (1632), cited in Hughes' Report of *R. v. Bebb* at p. 188.

157. Debts—Due to wife.]—In case of forfeiture, as by outlawry, the debts of the wife are always extended & seized.—*MYLES v. WILLIAMS* (1714), Gilb. 318; 93 E. R. 341; *sub nom.* *MILES v. WILLIAMS*, 10 Mod. Rep. 243; 1 P. Wms. 249.

Annotations:—*Mentd.* Bosvil v. Brander (1718), 1 P. Wms. 458; Ineson v. Moulston (1742), 9 Mod. Rep. 373; Stafford v. Buckley (1750), 2 Ves. Sen. 170; *Ex p.* Coysgame (1753), 1 Atk. 192; Gayner v. Wilkinson (1773), Dick. 491; Mitford v. Mitford (1803), 9 Ves. 87; Sparkes v. Bell (1828), 2 Man. & Ry. K. B. 124; Michell v. Hughes (1830), 6 Bing. 689; Sheen v. Garrett (1830), 6 Bing. 686; Lockwood v. Salter (1833), 5 B. & Ad. 303; Sherrington v. Yates (1844), 1 Dow. & L. 1032; Smith v. Marsack (1848), 12 L. T. O. S. 217; *Re Butler* (1863), 1 New Rep. 538; Chubb v. Stretch (1870), L. R. 9 Eq. 555.

158. — Due to bankrupt at teste of writ—Paid to assignees after issue of writ.]—On motion for an *amoveas manus*, where the sheriff had seized debts due to the bkpt. at the teste of the writ, & paid to his assignees under a commission of bkpcy., issued after the writ of extent, & before the taking of the inquisition:—*Held*: that was not regularly a subject for summary interference, but ought to be put on the record.—*R. v. GLENNY* (1816), 2 Price, 396; 146 E. R. 135.

159. — Subject-matter of pending action.]—Pending an action in the Ct. of C. P. an immediate extent in chief at the suit of the Crown was issued against pltf., & the debt which formed the subject-matter of the action was seized to the use of the Crown. Notice was subsequently given to deft. by the Board of Customs requiring him to pay the debt to the Crown:—*Held*: the ct. would refuse to grant an interpleader rule calling upon the Board of Customs & pltf's. to interplead, or to grant deft. summary relief at common law, but would leave him to his plea in the action.—*CANDY v. MAUGHAM* (1843), 6 Man. & G. 710; 1 Dow. & L. 745; 7 Scott, N. R. 401; 13 L. J. C. P. 17; 2 L. T. O. S. 90; 7 Jur. 1040; 134 E. R. 1078.

Annotation:—*Apld.* The Mogileff (No. 2), [1922] P. 122.

160. Separate interest of partner—Subject to partnership debts—Extent issued against one partner.]—*R. v. SANDERSON* (1810), Wight. 50; 145 E. R. 1171.

Annotation:—*Refd.* *Spears v. Lord Advocate* (1839), 6 Cl. & Fin. 180.

See, also, CHOSSES IN ACTION, Vol. VIII., p. 473, No. 438.

161. Not trust term—Reserved by vendor by way of mortgage—Vendee selling reversion to third party—Before completion.]—A trust term re-

served by the vendor by way of mtge. for securing part of the purchase-money on the sale of a fee simple, is not liable to seizure under an extent against the vendee for a debt due from him to the Crown, where the vendee had, in the meantime, before he had paid the remainder of the purchase-money, or taken an assignment of the term, sold his reversion to a purchaser, who, on paying the money due to the original vendor afterwards, took an assignment of the term to a trustee for himself to attend the inheritance, etc., the term, in that case, never having been in the Crown debtor, & therefore never, for an instant, subject to the Crown's debt.—*R. v. LAMB* (1824), 13 Price, 649; M'Cle. 402; 147 E. R. 1111.

(d) *Goods found under Extents in Aid.*

Extents in aid generally, *see* Sub-sect. 5, *post*.

Priorities of extents, *see* Sub-sect. 2, *ante*.

162. General rule.]—*R. v. QUASH*, No. 115, *ante*.

163. —.]—*R. v. BOWDAGE*, No. 117, *ante*.

(e) *Goods seized under Fieri Facias or as Distress for Rent.*

See, generally, DISTRESS; EXECUTION.

Priority of Crown debts generally, *see* CONSTITUTIONAL LAW, Vol. XI., pp. 581, 582, Nos. 830–836.

164. Before sale—Under fi. fa.—Extent tested after delivery of fi. fa. to sheriff.]—*R. v. PECK* (1716), Bunb. 8; 145 E. R. 576.

Annotation:—*Consd.* *Giles v. Grover* (1832), 9 Bing. 128.

165. — — — —.]—If goods are taken in execution on a *fi. fa.* against the King's debtor, & before they are sold an extent comes at the King's suit grounded on a bond debt tested after the delivery of the *fi. fa.* to the sheriff, these goods cannot be taken upon the extent.—*RORKE v. DAYRELL* (1791), 4 Term Rep. 402; 100 E. R. 1087.

Annotations:—*Consd.* *R. v. Wells* (1807), 16 East, 278; *R. v. Giles* (1820), 8 Price, 293; *Giles v. Grover* (1832), 2 Moo. & S. 197. *Refd.* *Paine v. Drew* (1804), 1 Smith K. B. 170; *R. v. Sloper* (1818), 6 Price, 114; *Garland v. Carlisle* (1833), 2 Cr. & M. 31.

166. — — — —.]—Goods seized under a *fi. fa.* at the suit of a subject are before sale liable to be taken by virtue of the King's extent, tested after the delivery of the *fi. fa.* to the sheriff.—*R. v. WELLS* (1807), 16 East, 278; 104 E. R. 1094.

Annotations:—*Consd.* *R. v. Sloper* (1818), 6 Price, 114. *Expld.* *Swain v. Morland* (1819), 1 Brod. & Bing. 370. *Consd.* *R. v. Giles* (1820), 8 Price, 293; *Giles v. Grover* (1832), 9 Bing. 128; *A. G. v. Leonard* (1888), 38 Ch. D. 622; *New South Wales Taxation Comrs. v. Palmer*, [1907] A. C. 179. *Refd.* *Thurston v. Mills* (1812), 16 East, 254.

167. — — — —.]—It is the sheriff's duty on an immediate extent to seize goods which have been already taken in execution under a *fi. fa.* at the suit of a subject if not actually sold, although the judgment on which the *fi. fa.* issued was not only obtained, but the goods had been seized under it before the Crown process was sued out.—*R. v. SLOPER & ALLEN* (1818), 6 Price, 114; 146 E. R. 758.

Annotations:—*Refd.* *R. v. Giles* (1820), 8 Price, 293; *Giles v. Grover* (1832), 2 Moo. & S. 197.

168. — — — —.]—Liability of sheriff.]—

Goods were taken in execution by the sheriff on a *fi. fa.* & whilst they remained in his hands unsold, an extent came at the King's suit, tested after the entry of the sheriff under the *fi. fa.* The sheriff seized the goods subject to the former seizure, & afterwards sold them under a *venditioni exponas* issued upon such extent, & paid over the proceeds of such sale by order of the Ct. of Exch.:—*Held*: pltf. could not maintain an action for money had

Sect. 2.—Extents: Sub-sect. 3, H. (e) & (f), I. & J.]

& received against the sheriff for the proceeds of the sale.—**THURSTON v. MILLS** (1812), 16 East, 254; 104 E. R. 1085.

*Annotations:—***Distd.** Swain v. Morland (1819), 1 Brod. & Bing. 370. **Consd.** R. v. Giles (1820), 8 Price, 293; Giles v. Grover (1832), 9 Bing. 128.

169. ———— *]*—Where goods have been seized under a *fi. fa.*, but remain unsold in the hands of the sheriff, he shall sell them under a writ of extent in chief or in aid, tested after the seizure under the *fi. fa.*, & shall satisfy the Crown's debt without regard to the previous execution.—**GILES v. GROVER** (1832), 9 Bing. 128; 6 Bli. N. S. 277; 1 Cl. & Fin. 72; 2 Moo. & S. 197; 131 E. R. 563, H. L.; *previous proceedings, sub nom.* R. v. **GILES** (1820), 8 Price, 293.

*Annotations:—***Consd.** Grove v. Aldridge (1832), 9 Bing. 428. **Refd.** Balme v. Hutton (1833), 9 Bing. 471; Woodland v. Fuller (1840), 11 Ad. & El. 859; Doe d. Hughes v. Jones (1842), 9 M. & W. 372; Playfair v. Musgrove (1845), 14 M. & W. 239; *Re* Johnson, *Ex p.* Rayner (1872), 41 L. J. 26; *Re* Clarke, [1898] 1 Ch. 336. **Mentd.** Godson v. Sanctuary (1832), 4 B. & Ad. 255; R. v. Maberley (1834), 4 Tyr. 345; Garland v. Carlisle (1837), 11 Bli. 421; Grainger v. Hill (1838), 5 Scott, 561; R. v. Archdall (1838), 2 J. P. 486; Whitworth v. Gaugain (1846), 1 Ph. 728; Bothamley v. Heyward (1862), 8 Jur. N. S. 1156.

170. ———— **Warrant to levy statutory penalty.]**—The sheriff entered & took possession of deft.'s goods under a *fi. fa.* Before the sale, the officers of the customs entered, to levy for a penalty recovered against deft. for an offence against the revenue. The sheriff permitted the goods to be taken for the penalty, & returned *nulla bona* to the *fi. fa.*:—**Held**: he was justified in so doing, as there was no distinction between a warrant to levy a penalty given to the Crown by statute & an execution under an extent.—**GROVE v. ALDRIDGE** (1832), 9 Bing. 428; 2 Moo. & S. 568; 2 L. J. C. P. 44; 131 E. R. 677.

171. ———— **Of goods distrained.]**—An immediate extent issued against the King's debtor, tested after a distress for rent justly due to the landlord, with notice to the tenant being the King's debtor, & appraisement of the goods & chattels, but before sale, shall prevail against the distress.—**R. v. COTTON** (1751), Park. 112; 2 Ves. Sen. 288; 145 E. R. 729.

*Annotations:—***Consd.** Rorke v. Dayrell (1791), 4 Term Rep. 402; **Expld.** R. v. Wells (1807), 16 East, 278. **Consd.** Swain v. Morland (1819), 1 Brod. & Bing. 370; R. v. Giles (1820), 8 Price, 293; Whitley v. Roberts (1825), M'Cle. & Yo. 107; Giles v. Grover (1832), 2 Moo. & S. 197. **Refd.** Cooper v. Chitty (1756), 1 Burr 20; Uppom v. Sumner (1779), 2 Wm. B. 1294; Brady v. Ball (1785), 1 Bro. C. C. 421; Farr v. Newman (1792), 4 Term Rep. 621; Lelain v. Philpott (1875), L. R. 10 Exch. 242; Moore, Nettelford v. Singer Manufacturing Co. (1904), 20 T. L. R. 366; Secretary of State for War v. Wynne (1905), 75 L. J. K. B. 25. **Mentd.** R. v. Lee (1819), 6 Price, 369; R. v. Edwards (1853), 9 Exch. 32; Carlisle v. Whaley (1867), L. R. 2 H. L. 391.

172. **After sale of property—& delivery to purchaser—Before writ of extent issued.]**—Where goods had been seized under a *fi. fa.*, part of them sold on Saturday, & the remainder on Monday, an extent, tested on the Monday, was put into the sheriff's hand at six o'clock, after the goods had been delivered to the purchasers, & the money received by the sheriff:—**Held**: the execution was executed, & the party who issued the *fi. fa.* might recover of the sheriff, in an action for money had & received, the money levied under the sale.—**SWAIN v. MORLAND** (1819), 1 Brod. & Bing. 370; 3 Moore, C. P. 740; 129 E. R. 766.

*Annotations:—***Consd.** Edwards v. R. (1854), 9 Exch. 628

PART I. SECT. 2, SUB-SECT. 3.—
H. (f).

a. Whether liable to seizure—

Master's lien—For wages & disbursements—Before teste of extent.]—**R. v.**

THE CITY OF WINDSOR, SYMES v.

Refd. Higgins v. M'Adam (1829), 3 Y. & J. 1; Giles v. Grover (1832), 9 Bing. 128; Discount Banking Co. of England v. Lambarde (1893), 42 W. R. 50. **Mentd.** Clarke v. Bradlaugh (1881), 44 L. T. 779.

173. **After sale of part of property under fi. fa.—Distress by landlord for rent—Before writ of extent issued—Subsequent assignment to creditors.]**—**R. v. EVANS** (1821), 9 Price, 366; 147 E. R. 120.

(f) *Goods subject to Lien.*

See, generally, LIEN.

Priority of Crown debts generally, *see* CONSTITUTIONAL LAW, Vol. XI., pp. 581, 582, Nos. 830–836.

174. **Whether liable to seizure—Lien of factor—Accepted bills drawn by principal—For value of goods received for sale.]**—A factor to whom goods have been sent for sale, & who has accepted bills of exchange drawn on him by his principal to the amount of their value, has a lien on such goods, & the purchase-money, available against the Crown where the goods or money have been seized by the sheriff under an extent against the principal for a debt due to the Crown.—**R. v. LEE** (1819), 6 Price, 369; 146 E. R. 837.

*Annotations:—***Apld.** R. v. Humphery (1825), M'Cle. & Yo. 173. **Apprvd.** Spears v. Lord Advocate (1839), 6 Cl. & Fin. 180. **Consd.** A.-G. v. Trueman (1843), 11 M. & W. 694. **Refd.** Giles v. Grover (1832), 9 Bing. 128.

175. ———— **"Goods in custody of person in trust."]**—A writ of extent having issued against A., a maltster, for a debt due to the Crown from him for duties on malt, a cargo of malt was seized under it in the hands of deft. Deft. being allowed to plead to the extent, in order to state his interest in the goods, alleged by his plea that the malt in question, after being manufactured, had had the duty charged upon it, & that such duty was paid, that it was then deposited by A., the maker, with deft., upon a contract with him, that he was to accept certain bills of exchange drawn by A., & that the malt was to be held by him as a pledge for the payment of them, & in case the bills were not paid, he was then to be at liberty to sell the malt, that the bills first accepted were renewed, but before the renewed bills became due the malt was seized:—**Held**: the malt was seizable in the hands of deft., under 28 Geo. 3, c. 37, s. 21, as "goods in the custody or possession of a person in trust" for the maker, chargeable with duties of excise in arrear & owing from such maker, such goods having been, whilst in the hands of A., liable not only for the specific duties chargeable upon them, which had been paid, but for other duties for which A. was responsible at that time, & remaining so at the time of the seizure.—**A.-G. v. TRUEMAN** (1843), 11 M. & W. 694; 13 L. J. Ex. 70; 8 J. P. 443; 152 E. R. 983.

*Annotation:—***Refd.** A.-G. v. Walsley (1843), 13 L. J. Ex. 66.

176. ———— **Wharfingers lien—For freight & wharfage due before teste of extent—Claim for warehouse room.]**—(1) A wharfinger's general lien on the goods of his customer in his possession for his balance, in respect of freight & wharfage, due before the teste of an immediate extent, issued against such customer being the Crown's debtor, shall prevail against the extent. **Qu.**: whether a wharfinger's lien for warehouse room, stands on the same footing.

A wharfinger detained goods on his premises, seized there under an immediate extent, in respect of a lien for wharfage, which was afterwards established:—**Held**: his claim for warehouse

THE CITY OF WINDSOR (1896), 5 Exch. C. R. 223.—**CAN.**

Sect. 2.—Extentis: Sub-sect. 3, J., K. (a) & (b), L.; sub-sects. 4 & 5, A. & B.]

could not be placed in a worse situation than a subject under similar circumstances, & the ct. could not take notice that greater difficulties existed in obtaining restitution from the Crown than from the subject.—*R. v. BURNS* (1827), 1 Y. & J. 579; 148 E. R. 803.

190. Surplus on realisation—Disposal of.]—The ct. will order the residue of the proceeds arising out of an extent after the demands of the Crown have been satisfied to be paid into ct. to the credit of the cause, the Crown & sheriff consenting, & in particular cases they will order that the amount be laid out in the purchase of Exchequer bills.—*R. v. FREAME* (1815), 1 Price, 299; 145 E. R. 1409.

191. ——— Crown only entitled to principal, interest & costs.]—The lands of debtor to the Crown having been extended & sold under Crown Debtors Act, 1785 (c. 35), the purchaser in 1802 obtained an order for payment of the money to the Deputy Remembrancer, subject to the order of the Ct. of Exch. The money was invested in the funds, & the dividends were from time to time reinvested. The money remained in ct. till 1857, when the fund had increased to an amount more than sufficient to satisfy the debt of the Crown:—*Held*: the Crown was not entitled to a share of the surplus arising from the investment, but only to the principal, interest & costs.—*R. v. DE LA MOTTE* (1857), 2 H. & N. 589; 157 E. R. 242; *sub nom. Re DELAMOTTE*, 27 L. J. Ex. 110.

192. Bonâ fide bid by agent of Crown—Sale not vitiated by.]—A sale under an extent is not vitiated as against a purchaser by the agent of the Crown making a *bonâ fide* bid for himself.—*R. v. MARSH* (1831), 1 Cr. & J. 406; 148 E. R. 1481.

K. Setting aside Proceedings.

(a) In General.

193. Time for—Before entering appearance & claim.]—*R. v. COLLINGRIDGE* (1816), West's Law of Extents, 181.

194. ——— Not after extension of time to plead.]—*R. v. RIPPON*, No 236, *post*.

195. ——— Utmost promptitude.]—*HODGE v. BORRODEN* (1818), Manning's Exchequer Practice, 2nd ed. 114.

196. Mode of—Not by motion founded on affidavit—Traverse of inquisition.]—On an application to discharge debt. in prison under an extent for duties in his hands, being a part of money received for premiums & duties on policies as agent of an insurance co., on the ground of his having been arrested by the office for the whole balance due from him to them, including such duties, before the extent issued, as to which debt he was afterwards discharged under the Insolvent Act:—*Held*: such a ground raised a question of merits which could not properly be brought before the ct., but by traversing the inquisition, & they could not set aside an extent *quia improvide emanavit*, on motion, on a statement of such facts by affidavit as would amount to a defence.—*R. v. SETON* (1820), 8 Price, 671; 146 E. R. 1331.

Annotation:—Mentd. Re Bannison (1841), 8 J. P. 233.

197. Amoveas manus—Whether granted in first instance—Seizure of partnership property—

Extent against one partner.]—The ct. will not grant an *amoveas manus*, to remove the King's hands from partnership property seized under an extent against one of the firm, in the first instance. The course is, to apply for a reference to the Deputy Remembrancer, & that he may report an account of the joint & separate property, when an *amoveas manus* may be obtained by consent, on giving security.—*R. v. ROCK* (1816), 2 Price, 198; 146 E. R. 68.

198. ——— Seizure of goods & lands beyond amount of debt—Payment of amount of debt into court.]—*R. v. HOPPER*, No. 180, *ante*.

199. When proceedings set aside—On ground of insufficiency of affidavit—Whether action of trespass maintainable—Against Treasury Solicitor.]—Pltf.'s goods were seized under a writ of extent which was subsequently set aside on the ground that the affidavit upon which the fiat of the judge was obtained for the issue of the writ was defective in not alleging that pltf. was insolvent. In an action against debts., the Treasury Solicitor & his assistants, for the trespass to pltf.'s goods by their seizure under the writ:—*Held*: as there was a judicial determination interposed between the filing of the affidavit upon which the writ was obtained & the issue of the writ, & as such issue was in consequence of that interposition, debts. were protected from liability.—*PRIDGEON v. MELLOR* (1912), 28 T. L. R. 261.

(b) Grounds for.

200. Insufficiency of affidavit of debt & danger.]—*R. v. RIPPON*, No. 232, *post*.

201. ———.]—*R. v. MARSH*, No. 127, *ante*.

202. ———.]—*R. v. PRIDGEON*, No. 128, *ante*.

203. Not denials & explanations in counter-affidavits—Facts expressly stated in affidavit of debt & danger.]—*R. v. LAWTON* (1817), West's Law of Extents, 180.

204. Omission in teste—Name of month—Amendable.]—*R. v. POWELL* (1721), Bunb. 83; 145 E. R. 603.

205. Refusal to permit examination of witnesses—At inquisition—By third party claimant.]—*R. v. BICKLEY*, No. 137, *ante*.

206. Defective finding of inquisition.]—*R. v. GREEN*, No. 106, *ante*.

207. ———.]—(1) An inquisition returned under an extent finding special matter, without drawing stating some conclusion as a fact, is bad & will be quashed on motion.

(2) An inquisition should not be argumentative but should state distinct facts.—*R. v. SHERWOOD* (1816), 3 Price, 269; 146 E. R. 258.

Inquisition generally, *see* Sub-sect. 3, E., *ante*.

208. Crown no longer entitled to prerogative remedy—Writ of extent issued for costs of petition of right.]—*R. v. COWING* (1877), Robertson's Civil Proceedings by & against the Crown, 398.

209. Irregularity in one of two writs—Not ground for setting aside both—Writ not irregular supported.]—*R. v. MALLEY*, No. 130, *ante*.

210. Discharge in bankruptcy.]—*R. v. SETON*, No. 196, *ante*.

211. ———.]—*Re BILLISON* (1844), 2 L. T. O. S. 313; *sub nom. Re BENNISON*, 8 J. P. 233.

—*See, generally, BANKRUPTCY & INSOLVENCY*, Vol. IV., pp. 579 *et seq.*

PART I. SECT. 2, SUB-SECT. 3.—K. (b).

b. Insolvency of debtor.]—A writ of extent was issued on behalf of the

Crown, on affidavits not distinctly stating that the debt was in danger, but showing the exact state of the affairs of debtor. On motion to set aside the writ:—*Held*: the insolvency

of debtor was plainly inferable from the facts stated in the affidavits, & the motion was not allowed.—*R. v. PORT WHITBY, ETC. ROAD CO.* (1863), 13 C. P. 237.—*CAN.*

L. Costs.

212. Whether Crown entitled to—Seizure of goods & lands—Goods alone sufficient to pay debt levied.]—*R. v. HOPPER*, No. 180, *ante*.

Right of crown to receive, or liability to pay, costs, *see* CONSTITUTIONAL LAW, Vol. XI., pp. 531–534.

SUB-SECT. 4.—EXTENTS IN CHIEF IN SECOND AND SUBSEQUENT DEGREES.

213. General rule—Extents in Aid Act, 1817 (c. 117) not applicable.]—(1) The above Act does not apply to extents in chief in the second degree. Therefore the Crown may proceed by extent to recover a debt due from a person indebted to the Crown debtor, a collector of taxes, who had received & misapplied the Crown's money, although he be not a debtor to the Crown within sect. 4 of that statute.

(2) Neither does the Rule of Ct. of June 22, 1822, respecting extents in aid, apply to extents in chief in the second degree.

(3) It is not necessary in the affidavit made for obtaining a baron's fiat for such an extent, in such a case, that there should be any averment of the insolvency of the Crown debtor, or any fact stated from which it may be inferred.

(4) The protection of parishes from reassessment is an object of the care of the ct., & the necessity of process of extent in the second degree for that purpose, where a collector is become defaulter, is a strong ground for granting the fiat, & the existing liability of the parish is consequently no answer to the objection of the Crown debt not being in danger.—*R. v. BELL*, *R. v. SHACKLE* (1823), 11 Price, 772; 147 E. R. 632.

214. — Distinguished from extents in aid.]—*R. v. BELL*, *R. v. SHACKLE*, No. 213, *ante*.

Extents in aid, *see* Sub-sect. 5, *post*.

215. When issuable—Indebtedness to Crown debtor found under extent in first degree—Affidavit of debt & danger.]—*R. v. GIBBONS* (1718), Bunb. 24; 145 E. R. 581.

216. — Before satisfying debt out of Crown debtor's property.]—(1) An immediate extent, & an extent in chief in the second, or any, degree are to be satisfied before an extent in aid of a prior teste, where the same goods were seized under both extents although the inquisition on the latter were taken before that on the former & the same day as the inquisition on the immediate extent; & the *venditioni exponas*, on the extent in aid was tested before that which issued on the extent in chief in the particular degree.

(2) It is not necessary that the Crown, proceeding to recover the debts of its debtor by extent within the degrees, should first apply the immediate debtor's proper effects in discharge of its debt, before it resorts to debtor's debts.—*R. v. LARKING* (1820), 8 Price, 683; 146 E. R. 1335.

217. — On default of collector of taxes—Though Crown debt not in immediate danger—Existing liability of parish.]—*R. v. BELL*, *R. v. SHACKLE*, No. 213, *ante*.

218. Affidavit of debt & danger—Need not aver insolvency of Crown debtor—Or state facts from which such inference drawn.]—*R. v. BELL*, *R. v. SHACKLE*, No. 213, *ante*.

219. What may be seized—Goods already seized

under fl. fa.—Before sale.]—*GILES v. GROVER*, No. 169, *ante*.

— **Under extents in chief in first degree.]—***See* Sub-sect. 3, II., *ante*.

220. Effect of issue—Crown debtor still entitled to sue debtor or receive debt—Before inquisition taken.]—An extent at the suit of the Crown against debtors of its debtor has not, before inquisition taken, the effect of divesting the Crown debtor's right to sue his debtor or to receive the debt.

An action was commenced after an extent issued against the debtor of a Crown debtor but before the taking of an inquisition under it, & proceeded after inquisition taken. The debt so sued for had been seized under it into the hands of the Crown & an *amoveas manus* issued on the application of plff. after issue joined: —*Held*: it was well proceeded in, & the ct. would discharge a rule for setting aside the verdict obtained & entering a nonsuit which had been granted on the ground that plff. had no right to continue the suit under such circumstances. —*LAKEMAN v. MCADAM* (1820), 8 Price, 576; 146 E. R. 1300.

221. Payment by surety after disputing liability—Proof in bankruptcy of principal.]—Where an extent of the Crown was taken out against a surety of a bkpt. who paid the debt, after disputing it some time, & being put to an expense thereby: —*Held*: he should, notwithstanding he disputed the payment of a just debt, be admitted to prove the expenses of such suit under the commission against the principal.—*Re GARWAY*, *Ex p. MARSHALL* (1751), 1 Atk. 262; 26 E. R. 167, L. C.

SUB-SECT. 5.—EXTENTS IN AID.

A. In General.

222. Nature of proceedings.]—An extent in aid was taken out by the King's receiver against his own debtor, against whom a commission of bkpey. was before awarded, & the assignees under the commission brought their bill in Ch. to set aside the extent in aid. After 15 years pendency of the suit, at the hearing, the bill was dismissed, for the Ct. of Ch. had no jurisdiction in cases of this nature, which were only proper for the Exchequer, being the ct. of the King's revenue, & from which the extent in aid issued, & therefore only examinable there, & if set aside here, yet the Exchequer might carry on the process, till the debt cleared, according to the course of the ct.—*BROWN v. BRADSHAW* (1701), Prec. Ch. 153; 1 Eq. Cas. Abr. 135; 21 E. R. 73; *sub nom.* *BROWN v. TRANT*, 2 Vern. 426.

Annotation: —*Reid*, *Phillips v. Shaw* (1803), 8 Ves. 241.

Distinguished from extent in chief in second degree.]—*See* No. 213, *ante*.

Priority of immediate extents over extents in aid.]—*See* Sub-sect. 2, *ante*.

B. At Whose Instance issued.

See, now, Extents in Aid Act, 1817 (c. 117).

223. Crown debtor—Debt originally due to.]—An extent in aid shall not issue but for a debt originally due to the Crown's debtor.—*R. v. BOWLING* (1726), Bunb. 225; 145 E. R. 655.

224. — Excise duties.]—*R. v. RIPPON*, No. 232, *post*.

225. — Not when sufficient means to pay—Effect of issue—Order to refund with costs.]—A farmer of the excise having estate of his own

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221. Whether Crown entitled to.]—Poundage & other expenses may be recovered from deft. *R. v. PATTON* (1852), 9 U. C. R. 307.—CAN

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sufficient to satisfy what he owed the King, took out an extent in aid against a person who owed him money, & failed:—*Held*: he would be ordered to refund with costs.—*CAPELL v. BREWER* (1087), 1 Vern. 469; 23 E. R. 595, L. C.

Annotations:—*Consd.* Phillips v. Shaw (1803), 8 Ves. 241. *Refd.* Brown v. Bradshaw (1701), Prec. Ch. 153; R. v. Blatchford (1784), 1 Anst. 162.

226. — No equity to be reimbursed by person prosecuting.]—There is no equity for a person, against whom an extent in aid has issued, to be reimbursed by his creditor on the ground that he has property sufficient to satisfy his debt to the Crown without having recourse to the extent in aid.—*PHILLIPS v. SHAW* (1803), 8 Ves. 241; 32 E. R. 347.

227. Not surety in bond to Crown—For payment of duties—Duties not payable till four months after entry.]—*R. v. SLY*, No. 99, *ante*.

228. Obligor of bond to Crown—Not in absence of literal breach of condition.]—An immediate debtor to the Crown, indebted by reason of his receipt of the Crown's money, as a country banker, to whom it had been paid by the district collector of excise, for the purpose of being remitted by him to London, is not entitled, although he shall have entered into the usual bond to the Crown given by persons in such situation to pay over the money, or remit good bills for the amount within 21 days after the receipt of it, to sue out an extent in his own aid, unless there have been in point of fact a literal breach of the condition of the bond. Such breach must be stated in the affidavit made to obtain the fiat for the extent. If there have been no breach of the bond, the obligor can only obtain an extent upon a commission & inquisition to find a debt due to the Crown, as in the ordinary course of proceeding with respect to simple contract debtors of the Crown.—*R. v. TARLETON* (1821), 9 Price, 647; 147 E. R. 210.

Annotation:—*Refd.* R. v. Marsh (1824), M'Cle. 688.

229. — Bond not forfeited.]—Bond to the Crown, though not forfeited, is sufficient to entitle the obligor to an extent in aid.—*R. v. MAINWARING* (1814), 1 Price, 202; 145 E. R. 1377.

Annotation:—*Refd.* R. v. Sly (1816), 2 Price, 157.

230. — Conditioned to sell goods & account for payment—Balance received between appointment as agent & issue of bond.]—An obligor to the Crown by bond, conditioned to sell all such sugars as shall be delivered to him as agent for the sale & disposal of certain sugars, & to account for & pay over the produce of the sale of the said sugars, to etc. may sue out a writ of extent in aid, under the proviso in the Extents in Aid Act, 1817 (c. 117), as upon a debt due from him to the Crown, being the balance of moneys received by him between the date of his appointment & the time of issuing the extent arising from the sale of sugars delivered to him after his appointment, & previous to the date of the bond.—*R. v. KYNAS-TON* (1823), 11 Price, 598; 147 E. R. 576.

231. — Bankers receiving deposits of taxes.]—*R. v. GIBBS*, No. 234, *post*.

C. Affidavits in Support.

232. Contents of—Defendant's insolvency.]—A brewer indebted to the Crown for excise duties, entitled to an extent in aid. *Qu.*: whether the affidavit should not state some act from whence the fact of deft.'s insolvency might be made to appear.—*R. v. RIPPON* (1816), 2 Price, 398; 146 E. R. 135; *sub nom.* R. v. SCOTT, West's Law of Extents,

53, 180; *subsequent proceedings, sub nom.* R. v. RIPPON, 3 Price, 38.

Annotation:—*Refd.* R. v. Pridgeon (1910), 103 L. T. 539.

233. — That debt not sued for in any other court.]—(1) The allegation required to be made in the affidavit to found an extent in aid "that the debt has not been sued for in any other ct." cannot be dispensed with, nor can the Crown's accountant be permitted to abandon another mode of proceeding, previously elected by him for the recovery of his debt, for the purpose of enabling him to make that allegation.

(2) The Crown's debtor cannot have a *diem clausit extremum* in aid after the death of his debtor against the estate, unless the debt have been found in the lifetime of deceased.—*Ex p. HIPPLESLEY* (1816), 2 Price, 379; 146 E. R. 129.

234. — Bankers suing out extent in aid—General allegation of having received Crown moneys sufficient.]—Bankers having money in their house, arising from the assessed taxes paid in for the purpose of being paid over to the Exchequer on account of a receiver general, for the due payment of which by him they have given bond to the Crown, are still entitled to sue out an extent in aid, & that upon affidavit stating generally their having received the money for that purpose; nor is it necessary that they should show, by allegations in the affidavit made to obtain the fiat, that they are not precluded by the Extents in Aid Act, 1817 (c. 117), from using the Crown process, or that, being sureties, they have been called upon by the Crown on account of the default of their principal, or in any other respect.—*R. v. GIBBS* (1819), 7 Price, 632; 146 E. R. 1081.

235. Affidavit as to existence of debt—Whether sufficient to support inquisition.]—(1) A fiat quashed *quia improvide emanavit*, & the extent in aid, issued thereon, set aside upon summary motion, on these grounds of objection founded on affidavits, that the inquisition upon which the fiat was obtained & the extent sued out, was made without *vivâ voce* testimony having been given to the jury of the existence of the debt: & that they found the debt to be due, solely on the usual affidavit on which the judge's fiat is obtained, made for that purpose, by or on the part of the prosecutors of the extent. (2) Such an affidavit is not legal evidence in such a case to support an inquisition.—*R. v. HORNBLLOWER* (1822), 11 Price, 29; 147 E. R. 391.

Annotations:—As to (1) & (2) *Dtd.* R. v. Ryle (1841), 9 M. & W. 227. *R. v. Hornblower* cannot be considered as any authority, when we find that the evidence which was there considered as inadmissible clearly was admissible, as being the statement of the party himself made against himself (GURNEY, B.). *Refd.* Beaufort v. Crawshaw (1866), 35 L. J. C. P. 342.

— Under immediate extent.]—*See* No. 143, *ante*.

236. Objection to—Cannot be taken on motion—After extension of time for pleading.]—After deft. has obtained time to plead to an extent, he cannot take any objection to the affidavit on which it is founded by motion. The proper course is to craveoyer & demur.—*R. v. RIPPON* (1816), 3 Price, 38; 146 E. R. 184; *sub nom.* R. v. SCOTT, West's Law of Extents, 184.

Annotation:—*Mentd.* R. v. Pridgeon, [1910] 2 K. B. 543.

D. The Inquisition.

237. Evidence—Whether affidavit as to existence of debt sufficient—Necessity of vivâ voce testimony.]—*R. v. HORNBLLOWER*, No. 235, *ante*.

Compare No. 143, *ante*.

238. — Inquisition on bond—Bond need not be produced.]—*R. v. SLY*, No. 99, *ante*.

239. Finding—Sufficient if prosecutor found indebted to Crown at time of inquisition—Amount of debt & time & manner of account not necessary.]—In an inquisition on an extent in aid, it is sufficient that prosecutor of the extent be found to be indebted to the Crown, generally, at the time of taking the inquisition, without stating the amount of the debt or the time & manner of its accrual.—*R. v. FRANKLIN* (1818), 5 Price, 614; 146 E. R. 711.

E. Seizure and Realisation.

240. What may be seized—Defendant's body.]—Creditors of debt. in extent in aid have not such an interest in the property as to entitle them to set it aside for their benefit, though joined in the application by debt.

An extent in aid against the body of a debt. may be issued, although not applied for in open ct.

A rule obtained to set aside an extent in aid should, in all cases, be served on the Crown officers of the department of the Revenue, to which prosecutor of the extent is indebted, to give them an opportunity of coming before the ct. If a party, proceeding by extent in aid, on such a debt due to the Crown as does not authorise that process, be at the same time really a debtor by bond also, that does not operate to remove the objection. An extent will not be set aside for irregularity unless the person objecting apply before the sale, under a *venditioni exponas* of the effects which have been levied. The rule to claim is not, *per se*, notice of the intended sale.—*R. v. MARES* (1816), 2 Price, 151; 146 E. R. 51.

241. — Notes & cheques left with bank's caretaker—After closing hours.]—*R. v. LAMTON*, No. 104, *ante*.

242. — Goods already seized under *fi. fa.*—Not yet sold.]—The doctrine of the Crown process having priority where it bears teste on a day subsequent to a subject's execution on *fi. fa.* under which the sheriff has seized, applies to cases of extents in aid. The Extents in Aid Act, 1817 (c. 117), enacting that extents in aid shall not be sued out & prosecuted in certain cases does not extend to the prosecution of such extents where they have been commenced before the passing of the Act.—*R. v. SLOPER & ALLEN* (1818), 6 Price, 144; 146 E. R. 767.

243. — — — — —.]—*GILES v. GROVER*, No. 169, *ante*.

244. — Not goods of bankrupt—Previously assigned.]—An extent in aid is barred by a previous assignment of debtor's goods, under a commission of bkpt., but not by the issuing of the commission only.—*A.-G. v. CAPELL* (1687), 2 Show. 480; 89 E. R. 1053.

*Annotations:—*Consd. *R. v. Giles* (1820), 8 Price, 293; *Giles v. Grover* (1832), 9 Bing. 128. *Refd.* *Brassey v. Dawson* (1733), *Rdg. temp. H.* 12; *R. v. Cotton* (1751), Park. 112; *R. v. Edwards* (1853), 9 Exch. 32. *Mentd.* *A.-G. v. Allgood* (1743), Park. 1; *R. v. Willes* (1745), Park. 85.

— Under extents in chief in the first degree.]—See Sub-sect. 3, H., *ante*.

245. Surplus on realisation—Refunded to defendant on application—With costs of proceedings & application.]—If a greater sum than is actually due & costs have been levied under an extent in aid out of personal effects, the ct. will, on motion, order the surplus & costs of the proceeding which have been so levied to be refunded to debt. together with the costs of such an application.—*R. v. EDWARDS* (1815), 1 Price, 448; 145 E. R. 1458.

*Annotation:—*Fold. *R. v. Tidmarsh* (1817), 5 Price 180.

246. *S. P. R. v. TIDMARSH* (1817), 5 Price, 189; 146 E. R. 578.

F. Setting aside and Stay of Proceedings.

247. Who may move to set aside—Not creditors of defendant—Though joined in application by defendant.]—*R. v. MARES*, No. 240, *ante*.

248. Grounds for—Debt to Crown discharged.]—Extent in aid set aside, the Crown's debt being paid.—*R. v. CLARKE* (1726), Bunb. 221; 1 Com. 388; 145 E. R. 654.

*Annotations:—*Refd. *R. v. Bennett* (1810), Wl-ht. 1; *R. v. Bingham* (1833), 3 Tyr. 938.

249. — — — — —.]—A Crown debtor had issued an extent in aid against his debtor, who was afterwards discharged under an insolvent Act. The Crown debtor subsequently satisfied the Crown its debt, & sued out a *sci. fa.* against the insolvent on the extent in aid:—*Held*: as no debt to the Crown existed, he could not pursue his proceedings on the extent in aid.—*R. v. BINGHAM* (1833), 1 Cr. & M. 862; 2 Dowl. 128; 3 Tyr. 938; 2 L. J. Ex. 266; 149 E. R. 618.

250. — — — — — Not when bills of exchange deposited in satisfaction—Bills not bona fide property of depositor.]—The ct. will not, in exercise of its equitable jurisdiction over extents, grant a writ of *amoveas manus*, to release property seized under an extent in aid against a debtor in a more remote degree, on the ground that the debt which had been found on the original commission to be due to the King's debtor has been subsequently satisfied, by the payment of bills of exchange deposited with him for securing that debt, if it appear that these bills were not the *bona fide* property of the person depositing them who thereby committed a breach of trust, because the ct. will consider that the real proprietors of the bills have a paramount claim on the person with whom they had been deposited, if he has been satisfied his debt by other means.—*R. v. BLACKETT* (1814), 1 Price, 36 n; 145 E. R. 1312.

251. — Not irregularity—Long acquiescence—Collusion.]—An immediate extent in aid against E. was granted to L. on Mar. 1, 1721; on Nov. 12, 1723, it was moved to discharge this extent:—*Held*: the motion would be denied for that the extent was regularly sued out, but if not it would not have been set aside in this case because E. had come to an agreement with L., & also by reason of the long acquiescence after the extent.—*R. v. ENDERUPP* (1723), Bunb. 134; 145 E. R. 622.

252. — — — — — Unless application made before sale of effects.]—*R. v. MARES*, No. 240, *ante*.

253. — Not that debts levied of greater amount—Than debt due from original debtor to Crown.]—The ct. will not set aside an extent in aid on the ground that the debt levied under it is of greater amount than the debt sworn to be due from the original debtor of the Crown, although the party move it on the condition of paying the Crown's debt.—*R. v. BUNNEY* (1815), 1 Price, 394; 145 E. R. 1440.

254. Service of rule to set aside—On Crown officers of revenue department—To which prosecutor indebted.]—*R. v. MARES*, No. 240, *ante*.

G. Costs.

Right of the Crown to receive costs, *see, generally*, CONSTITUTIONAL LAW, Vol. XI., pp. 531–533, Nos. 349–363.

Liability of the Crown to pay costs, *see, generally*, CONSTITUTIONAL LAW, Vol. XI., pp. 533, 534, Nos. 364–373.

255. Whether prosecutor entitled to—When goods & lands seized—Goods alone sufficient to pay debts levied.]—*R. v. HOPPER*, No. 180, *ante*.

Sect. 2.—Extents: Sub-sect. 5, G. Sects. 3, 4, 5 & 6: Sub-sect. 1, A. (a) & (b).]

256. — Lands actually sold under extent.]—*R. v. HOPPER*, No. 180, *ante*.

257. Whether Crown entitled to—Where unnecessary to resort to sale of lands—Crown Debtors Act, 1785 (c. 35).]—*R. v. HOPPER*, No. 180, *ante*.

258. Whether equitable mortgagee entitled to—Costs of defending extent in aid.]—An equitable mtgee. is not entitled to the costs of defending an extent in aid, or to be excused from paying a deposit.—*Re STEPHENS*, *Ex p. STEPHENS* (1834), 2 Mont. & A. 31, Ct. of R.

Annotation:—Reid. Re Hofmann, Ex p. Carr (1879), 11 Ch. D. 62.

SECT. 3.—DIEM CLAUSIT EXTREMUM.

259. When available—Whenever extent might have issued—During lifetime of deceased.]—*Diem clausit extremum* not set aside on motion, for debt. may plead to the inquisition.

Wherever an extent might have issued against a man in his lifetime, a *diem clausit extremum* may issue against his estate after his death.—*R. v. MICHENER* (1722), Bunb. 118; 145 E. R. 616.

260. — Simple contract debt due to Crown—Found upon commission.]—Where a person is indebted by simple contract to the King at his death, & that debt is found upon a commission, a *diem clausit extremum* may issue against his estate, though he was not debtor to the King by record at his death.—*R. v. CURTIS* (1750), Park. 95; 1 Ves. Sen. 483; 145 E. R. 724.

Annotations:—Consd. R. v. Smith (1810), Wight. 34. *Reid. R. v. Hodge* (1823), 12 Price, 537.

See, now, Crown Suits, etc. Act, 1865 (c. 104), s. 47.

261. — In aid of Crown debtor—Debt so found in lifetime of deceased.]—No *diem clausit extremum* can issue regularly against the estate of a person, who was not debtor to the King, or found in his lifetime to be debtor to the King's debtor.—*R. v. BOON* (1743), Park. 16; 143 E. R. 701.

Annotations:—Appld. Ex p. Hipplesey (1816), 2 Price, 379 *Reid. R. v. Curtis* (1750), Park. 95.

262. — — — — —.]—*Ex p. HIPPLESEY*, No. 233, *ante*.

263. Immediate issue against terre tenants.]—*R. v. HASSELL* (1824), 13 Price, 279; M'Cle. 105; 147 E. R. 990.

264. Rule absolute in first instance—Crown debtor dying insolvent.]—Where a Crown debtor has died insolvent a motion for a writ of *diem clausit extremum* is absolute in the first instance.—*R. v. CREWE (LORD)* (1836), 5 Dowl. 158.

265. Affidavit of debt & danger—Necessity for.]—*R. v. HASSELL* (1824), 13 Price, 279; M'Cle. 105; 147 E. R. 990.

See, now, Crown Suits Act, 1865 (c. 104), s. 117.

— For extents in chief in first degree.]—*See Sect. 2, sub-sect. 3, B., ante*.

266. What may be seized—Lands descended on heir—& lands demised by testator—Successively or at once.]—*R. v. HASSELL* (1824), 13 Price, 279; M'Cle. 105; 147 E. R. 990.

267. Application for amoveas manus—Admission of debt due to Crown—Necessary preliminary.]—*R. v. HODGE* (1823), 12 Price, 537; 147 E. R. 801.

268. — Involving several claims & points of law—Not disposed of summarily by court—Without consent of Crown.]—*R. v. HODGE* (1823), 12 Price, 537; 147 E. R. 801.

269. Realisation of lands.]—A Crown debt was

contracted in 1817 & debt. died in 1823. In 1824, debt's devisees or exors., after an inquisition on a writ of *diem clausit extremum*, entered into a contract for the sale of certain premises by private contract. In 1826 the A.-G. moved to confirm the sale, & that the Remembrancer might be ordered to convey the premises, which was ordered.—*R. v. ADAM* (1826), 2 Y. & J. 122, n.; 148 E. R. 858.

— Under extents in chief in first degree.]—*See Sect. 2, sub-sect. 3, H. (b), ante*.

270. Whether second writ will issue—Inquisition finding against Crown—*Mellius inquirendum*.]—If on a writ of *mellius inquirendum* it be again found against the King, the King shall not have a new writ of *mellius inquirendum* (*per CUR.*).

True it is that after a *diem clausit extremum* awarded & found against the King, no new writ of *diem clausit extremum* shall issue. But in such case a writ of *mellius inquirendum* shall issue (*per CUR.*).—*STOUGHTER'S CASE* (1610), 8 Co. Rep. 168 a; 77 E. R. 728.

Annotations:—Reid. Ex p. Duplessis (1754), 2 Vw. Sen. 538, 555. *Mentd. Ex p. Roberts* (1743), 3 Atk. 5; Dean v. R. (1846), 15 L. J. Ex. 236.

271. Settling aside writ—Not granted on motion—Where defendant may plead to inquisition.]—*R. v. MICHENER*, No. 259, *ante*.

SECT. 4.—SCIRE FACIAS.

See Part III., post.

SECT. 5.—SUMMARY PROCEEDINGS FOR THE RECOVERY OF DUTIES.

See Crown Suits, etc. Act, 1865 (c. 104), ss. 55–58. Corporation duty, excise duty & stamp duties.]—

See REVENUE.

Estate & succession duty.]—*See ESTATE & OTHER DEATH DUTIES.*

Income tax.]—*See INCOME TAX.*

Inhabited house duty.]—*See INHABITED HOUSE DUTY.*

Land tax.]—*See LAND TAX.*

Compensation under Licensing (Consolidation) Act, 1910 (c. 24).]—*See INTOXICATING LIQUORS.*

Form of writ.]—*See Crown Suits, etc. Act, 1865 (c. 104), Sched. 4 & Exchequer Rules 1860, Sched. A as amended by Exchequer Rules 1861.*

Whether writ renewable.]—*See Exchequer Rules 1860, r. 127; Rule of Nov. 26, 1861.*

Power of court to refer for report & statement of special case.]—*See Crown Suits, etc. Act, 1865 (c. 104), s. 58; R. S. C., Ord. 34, applied by Ord. 68, r. 2.*

Power of Court to order production of documents.]—*See Crown Suits, etc. Act, 1865 (c. 104), s. 58; R. S. C., Ord. 34, applied by Ord. 68, r. 2.*

Power of Court to direct any issue to be tried by jury.]—*See Crown Suits, etc. Act, 1865 (c. 104), s. 58; R. S. C., Ord. 34, applied by Ord. 68, r. 2.*

Power of court to attach.]—*See CONTEMPT OF COURT, ATTACHMENT & COMMITTAL, p. 41, Nos. 422–426, ante.*

Appeals.]—*See Crown Suits, etc. Act, 1865 (c. 104), ss. 59, 61; & R. S. C., Ord. 58, applied by Ord. 68, r. 2.*

Procedure generally, *see Sect. 1, sub-sect. 4, ante.*

SECT. 6.—ENGLISH INFORMATIONS.

SUB-SECT. 1.—OBJECTS AND PURPOSES OF.

A. Assertion of Crown's or Duke of Cornwall's Right to Hereditaments.

(a) Land.

Royal grants.—See CONSTITUTIONAL LAW, Vol. XI., pp. 557–581, Nos. 572–829.

272. Manor—Passed out of Crown—By Royal grant.—L. exhibited an English bill against F. in respect of lands situate in the county of D., which formed part of a Crown grant of a manor out of Crown lands. The bill was dismissed on the ground that the land, being matter of inheritance, had passed out of the Crown, & could not properly be sued for by English bill.—*LEEKE v. FRECHVYLE* (1606), cited in Wight. at p. 201; 145 E. R. 1228. *Annotation*:—*Consd.* A.-G. to Prince of Wales v. St. Aubyn (1811), Wight. 167.

273. Crown lands—Grant fraudulently obtained.—The honour of T. & forest of N. were granted by letters patent of the Duchy of Lancaster at a great undervalue & under circumstances of fraud, surprise, & deceit against the Crown:—*Held*: the proceeding to set it aside was by English information in equity, & not by *sci. fa.* or otherwise at common law.—A.-G. v. VERNON (1686), 2 Rep. Ch. 353; 21 E. R. 685; *sub nom.* SAWYER v. VERNON, 1 Vern. 370.

274.—The Crown recovered certain lands & manorial rights by an English information in the Ct. of Exch. against private persons who claimed to be sole owners.—A.-G. v. REVELEY (1869), Karslake's Special Rep.

Annotations:—*Consd.* A.-G. v. Barker (1872), L. R. 7 Exch. 177. *Refd.* A.-G. v. Constable (1879), 27 W. R. 661. *Mentd.* Evans v. Merthyr Tydvil U. D. C. (1898), 79 L. T. 578; Sitwell v. Worrall (1898), 79 L. T. 86; Scott v. Townyn R. D. C. (1907), 5 L. R. 1050.

275. Parcel of Duchy of Cornwall.—The Prince of Wales may file an English information of intrusion by his A.-G. for lands parcel of the Duchy of Cornwall.—A.-G. TO PRINCE OF WALES v. ST. AUBYN (1811), Wight. 167; 145 E. R. 1215.

Annotations:—*Mentd.* Bennett v. Neale (1811), Wight. 324; A.-G. v. London Corp'n. (1845), 8 Beav. 270; A.-G. to Prince of Wales v. Crossman (1866), L. R. 1 Exch. 381; A.-G. v. Barker (1872), 26 L. T. 34; A.-G. v. Constable (1879), 27 W. R. 661; Stanley v. Wild, [1900] 1 Q. B. 256.

276. Copyholds.—On an English information to discover copyhold lands & what timber had been cut down & what waste committed, deft. demurred because it involved forfeiture of the place where the waste was committed & a penalty:—*Held*: the demurrer must be allowed.—A.-G. v. VINCENT (1724), Bumb. 192; 145 E. R. 644.

Annotation:—*Refd.* U.S.A. v. McTear (1867), L. R. 4 Eq. 327.

277. Foreshore.—A.-G. v. FARMEN (1676), 2 Lev. 171; 83 E. R. 503; *sub nom.* A.-G. v. TURNER, 2 Mod. Rep. 106, Ex. Ch.

278. Purpresture—Protection of jus privatum of King.—A.-G. v. PLYMOUTH CORPN. (1754), Wight. 134; 145 E. R. 1202.

Annotation:—*Mentd.* A.-G. to Prince of Wales v. Crossman (1866), L. R. 1 Exch. 381.

279.—Where a nuisance & purpresture in a harbour are committed, an information in equity lies to abate it.—A.-G. v. RICHARDS (1795), 2 Anst. 603; 145 E. R. 980.

Annotations:—*Expld.* A.-G. to Prince of Wales v. St. Aubyn (1811), Wight. 167. *Foild.* A.-G. v. Parmeter (1822), 10 Price. 378. *Mentd.* Hammerton v. Dysart (1915), 85 L. J. Ch. 33.

280.—Or jus publicum of subject.—A.-G. v. PARMETER, *Re* PORTSMOUTH HARBOUR, No. 299, *post*.

281.—A.-G. v. BURRIDGE, PORTSMOUTH HARBOUR CASE, No. 300, *post*.

282.—A.-G. v. CONSTABLE (1879), 4 Ex. D. 172; 27 W. R. 661.

Annotation:—*Refd.* Dixon v. Board of Trade Secretary (1886), 3 T. L. R. 35.

283.—A.-G. v. EMERSON, No. 308, *post*.

284.—A.-G. v. NEWCASTLE-UPON-TYNE CORPN., No. 309, *post*.

See, also, Sect. 1, sub-sect. 3, A., *ante*.

Right to discovery of documents.—See Nos. 288, 308, 309, *post*.

285. Bed of tidal river—Purpresture—Jus privatum Regis—Jus publicum.—An information & bill was filed by pltf., a riparian proprietor on a tidal navigable river, to restrain deft., an opposite riparian proprietor, from constructing a jetty in the alveus of the river so as to injure pltf.'s property & interfere with the navigation:—*Held*: (1) a riparian proprietor had no greater right to use the alveus of a tidal than a non-tidal river, & although pltf. had proved no serious injury to his property, he was entitled to an injunction; (2) the suit being by information & bill was properly framed in respect of the private & public wrong complained of.—A.-G. v. LONSDALE (EARL) (1868), L. R. 7 Eq. 377; 38 L. J. Ch. 335; 20 L. T. 64; 17 W. R. 219.

Annotations:—*As to* (1) *Consd.* A.-G. v. Terry (1873), 9 Ch. App. 425, n. *Refd.* Orr Ewing v. Colquhoun (1877), 2 App. Cas. 839; Lawes v. Turner & Frere (1892), 8 T. L. R. 584.

(b) Manorial Rights.

286. General rule.—A.-G. v. REVELEY, No. 274, *ante*.

287. Advowson.—A.-G. v. SITWELL (1835), 1 Y. & C. Ex. 559; 5 L. J. Ex. Eq. 86; 160 E. R. 228.

Annotations:—*Mentd.* Steele v. Haddock (1855), 10 Exch. 643; Wharham v. Wharham (1861), 3 Sw. & Tr. 301.

288. Waste.—Deft. being seised in fee of an ancient freehold tenement within a manor of which the Duke of Cornwall & T. were tenants in common, took a conveyance, by indenture from T., of all the quit rents payable to him in respect of messuages & hereditaments within the ancient tenement; T. reserving to himself his interest in the tin, & his right of shooting over the premises. Both before & after the execution of the indenture, deft. exercised various acts of ownership on the wastes adjoining the ancient tenement, alleging that they were not manorial wastes, but belonged to the ancient tenement, & that since the execution of the indenture by which he acquired the quit rents, he had an absolute right to the freehold thereof, subject to the reservations in the indenture, & the customary tolls of tin. The information stated that the Duke of Cornwall & T. were entitled to all wastes within the manor, in equal moieties, as tenants in common, & it charged, that the indenture contained general words, purporting to convey the waste lands, & also that it conveyed T.'s interest in the waste lands generally, without stating that they formed any part of the ancient tenement, & without stating the boundaries of the ancient tenement, & that deft. ought to set forth the boundaries; & that by the custom of Cornwall all tin bound lands must have been wastes, & that it would appear by the indenture, if produced, that one moiety of the tin under the lands in question, except what was strictly the ancient tenement, was reserved to T. Deft. by his answer, denied that it would appear from the indenture as was stated in the information, & he submitted whether he ought to be compelled to produce the same, but in his first answer he set forth a considerable portion of the deed, and in his second answer he stated that the boundaries were matters of notoriety, & that, as to them, the effect of the conveyances must be determined by

Sect. 6.—English informations: Sub-sect. 1, A. (b) & (c), B., C. & D.; sub-sect. 2.]

themselves:—*Held*: deft. must produce the indenture executed to him by T.

I think the documents ought to be produced on two grounds: (1) it is partially set forth in the answer & the Crown ought to see it, to ascertain the correctness of the answer; (2) I think it is part of the Crown's title, for the Crown is jointly interested in the manor with the party granting, & any act done by that person would be an act of ownership, of which the Crown may take advantage (ALDERSON, B.).—A.-G. v. IAMBIE (1838), 3 Y. & C. Ex. 162; 8 L. J. Ex. Eq. 23; 2 Jur. 698; 160 E. R. 656.

Annotation:—*Generally*, *Mentl.* Smith v. Beaufort (1842), 1 Harc. 507.

289. To search & carry away minerals.—The Queen, as lady of a manor, granted to two licensees, in pursuance of certain alleged manorial rights, power to enter the lands comprised in the manor & search for & carry away minerals, making to the copyholder & terre tenant respectively a customary compensation for surface damage. The licensees entered without the consent of either copyholder or terre tenant & began mining operations; whereupon the terre tenant commenced an action of trespass against them. The A.-G., on behalf of the Queen & the licensees, then filed an information & bill on the equity side of the Exchequer against copyholder & terre tenant, praying that the rights of the Crown within the manor should be declared, & that the action of trespass should be restrained. On an application for an injunction in accordance with the prayer of the information & bill:—*Held*: the rights of the Sovereign being involved in the proceedings in the action, the Sovereign was entitled *jure coronae* to be actor in any litigation affecting those rights, & an injunction would issue.—A.-G. v. BARKER (1872), L. R. 7 Exch. 177; 41 L. J. Ex. 57; 26 L. T. 34; 20 W. R. 509.

Annotations:—*Consd.* A.-G. & Humber Conservancy Comrs. v. Constable (1879), 4 Ex. D. 172; Stanley v. Wild, [1900] 1 Q. B. 256. *Refd.* Dixon v. Farrer (1886), 17 Q. B. D. 658; A.-G. v. Newport Corpn., *Re* Ullman v. Cowes Harbour Comrs. (1909), 100 L. T. 436.

(c) Other Cases.

290. Waste in royal forest—Trees felled for King—Branches cut by King's ranger.—By a grant to a ranger of a forest of all wood, blown or thrown down by the wind, & all deadwood & boughs & branches of trees, & wood in the forest cut off or thrown down, branches cut from trees felled for His Majesty's use do not pass.—A.-G. v. STAWELL (LORD) (1795), 2 Anst. 592; 145 E. R. 976.

291. Incorporeal right of forest—Injury by interference with game.—An information by the A.-G. stated that the Queen was seised in her demesne as of fee, in right of her Crown, of W. Forest, & that she & her ancestors had continually held the forest, & the game of the forest, & all rights appertaining thereto, that deft. unlawfully inclosed 100 acres of the forest, whereby the Queen could not have and enjoy the forest & game. Deft. pleaded that the place inclosed was not within the forest, *modo et forma*. On demurrer:—*Held*: the plea was good, since this was not an information of intrusion into lands of the Crown, but an information, in the nature of an action of trespass on the case, for the injury to the incorporeal right of forest, by interfering with the game.—A.-G. v. HALLETT (1847), 1 Exch. 211; 5 Dow. & L. 87; 16 L. J. Ex. 262; 154 E. R. 89.

B. Discovery.

292. On outlawry—Real & personal estate of outlaw—Whether fraudulent gifts or conveyances made.—A bill was exhibited against deft. by A.-G. to discover his real & personal estate, & what secret & fraudulent gifts & conveyances he had made, for that he was outlawed, whereby his goods & the profits of his lands were forfeited. Deft. demurred, *quia nemo tenetur prodere seipsum*, & to discover his estate upon a forfeiture:—*Held*: deft. ought to make answer to this bill, because the Protector was entitled to his estate by course of law, & the outlawry was in the nature of a gift to the King, or a judgment for him.—PROTECTOR v. LUMLEY (LORD) (1655), Hard. 22; 145 E. R. 380.

Annotation:—*Refd.* A.-G. v. Duplessis (1752), Park. 144.

293. —Consideration of mortgage by outlaw & amount due.—S. having made a mtgo. of his estate, was afterwards indicted & outlawed for high treason; the A.-G. thereupon exhibited a bill in the Ct. of Exch. to discover the consideration of the mtgo., & what was due upon it, & that the Crown might redeem, if any thing was due:—*Held*: the A.-G. on behalf of the Crown would be admitted to redeem.—A.-G. v. CROFTS (1708), 4 Bro. Parl. Cas. 136; 2 E. R. 91, H. L.

294. Stock liable to duties.—A.-G. v. CRESNER, No. 304, *post*.

295. Copyhold lands—Amount of timber felled & waste committed.—A.-G. v. VINCENT, No. 276, *ante*.

Discovery of documents—Crown's right to.—See No. 288, *ante*, Nos. 308, 309, *post*.

C. Accounts and Payments.

296. Fee farm rents.—The original equity jurisdiction of the Ct. of Exch. in matters of revenue still exists, notwithstanding Ct. of Chancery Act, 1841 (c. 5), & the ct., on the application of counsel for the A.-G., appointed clerk examiners to take evidence in a revenue suit instituted on the equity side of the ct., on an information to recover arrears of fee farm rents alleged to be due from deft. to the Crown, although the office of clerk examiner is in terms abolished by s. 15 of the above Act.—A.-G. v. EVANS (1862), 5 L. T. 760.

297. Rentcharges.—An information claiming payment of a rentcharge instituted on behalf of a charity against the owners of some of the lands charged, may be sustained without making the owners of the residue of the lands defts. though the rule is otherwise in the case of a bill filed for the same purpose by a private person.—A.-G. v. NAYLOR (1863), 1 Hem. & M. 809; 3 New Rep. 191; 33 L. J. Ch. 151; 10 L. T. 406; 10 Jur. N. S. 231; 12 W. R. 192; 71 E. R. 354.

Annotation:—*Mentl.* *Re* Herbage Rents, Greenwich, Charity Comrs. v. Green, [1896] 2 Ch. 811.

298. Public money received by Clerk of Patents—Interest & profits on.—Deft. was, in 1833, appointed Clerk of the Patents under 3 & 4 Will. 4, c. 84:—*Held*: the position & liability of deft. under the statute were those of a paid agent for the purpose of receiving & paying over money, & in the absence of any enactment expressly excluding the jurisdiction, the Crown was entitled to file an information against deft. for an account of the public moneys received by him.

It having been the practice in the Inland Revenue Dept. for purchasers of stamps to be allowed a reduction on payment in cash, the Clerk of the Patents had been accustomed to purchase stamps for the accommodation of patentees, he paying the reduced amount for the stamps, & receiving the amount in full from the patentees:—*Held*: he

was liable to account for any profit that might have been made on the purchase of stamps purchased with public money.—*A.-G. v. EDMUNDS* (1868), L. R. 6 Eq. 381; 37 L. J. Ch. 706; 18 L. T. 505.

Annotation.—*Mentd.* *Edmunds v. A.-G.* (1878), 47 L. J. Ch. 345.

D. Other Cases.

299. Abatement of nuisance—*Jus publicum*.]—A nuisance, consisting of buildings, erections & inclosures between the high & low water marks in the harbour of P., interrupting the flux & reflux of the tide, was abated by decree of the Ct. of Exch., where made under the sanction & authority of the corpn. having a grant from the Crown by charter.

The King's A.-G., on the part of the Crown, may proceed in such cases for the purpose of protecting either the *jus privatum* of the King from the purpresture, or the *jus publicum* of the subject from nuisance, by information on the King's Remembrancer's side of the Exch. by English bill, praying a personal decree against defts. in the suit.—*A.-G. v. PARMEYER, Re PORTSMOUTH HARBOUR* (1811), 10 Price, 378; 147 E. R. 345; *affd.* S. C. *sub nom.* *PARMEYER v. A.-G.* (1813), 1 Dow, 316, H. L.

Annotations.—*Refd.* *A.-G. v. Lonsdale* (1868), L. R. 7 Eq. 377. *Mentd.* *A.-G. v. Prince of Wales v. St. Aubyn* (1811), Wright, 187; *Jewison v. Dyson* (1842), 6 State Tr. N. S. 1; *A.-G. v. Chambers* (1854), 4 De G. M. & G. 206; *R. v. Cunningham, Brown & Summers* (1859), 28 L. J. M. C. 66; *A.-G. v. Simpson*, [1901] 2 Ch. 671.

300. ———.]—The Crown may grant, by letters patent, to a corpn., a town & borough, being *caput portus*, & all the lands between the high & low water marks, but this subject-matter of grant, as being *jus privatum* in the King, must be subject to the *jus publicum* or public right of the King & people, to the easement of passing & re-passing both over the water & the land.

Obstructions to such a right may be a nuisance, & the Ct. of Exch. has jurisdiction to entertain a suit for abatement of such nuisance. The mode of proceeding in such suit may be by information by English bill, & the ct. may determine the question on evidence, or may direct an issue.—*A.-G. v. BURRIDGE, PORTSMOUTH HARBOUR CASE* (1822), 10 Price, 350; 147 E. R. 335.

Annotations.—*Refd.* *A.-G. v. Lonsdale* (1868), L. R. 7 Eq. 377. *Mentd.* *A.-G. v. Chambers* (1854), 4 De G. M. & G. 206.

Proceedings under Marriage Acts.]—See HUSBAND & WIFE.

In respect of railway passenger duty due to Crown.]—See RAILWAYS & CANALS; REVENUE.

SUB-SECT. 2.—PROCEDURE.

See R. S. C., Ord. 68, rr. 1, 2, 2A; Crown Suits, etc. Act, 1865 (c. 104), Part II.; Exchequer Rules, 1865 & 1866.

Choice of forum & venue.]—See CONSTITUTIONAL LAW, Vol. XI., pp. 525–527, Nos. 294–309a.

301. Parties—Rentcharge issuing out of land belonging to several owners—All owners need not be joined.]—A.-G. v. NAYLOR, No. 207, *ante*.

— **Plaintiffs members of same corporation as**

PART I. SECT. 6, SUB-SECT. 2.
c. Whether defendant must answer
—Penalties & forfeitures waived—
When discovery might incriminate.]—
An information charged distillers with distilling spirits on which duty had not been paid; they having evaded payment by concealing the distillation,

& pretending that their distillery had been silent during the time when the spirits were distilled. The information required them to discover the actual quantities of wort fermented in the distillery, & prayed an account of the duties payable on spirits distilled. The A.-G. waived all penalties &

defendants.]—*See CORPORATIONS*, Vol. XIII., p. 417, No. 1376.

302. Whether defendant must answer—Where neither penalty nor forfeiture involved.]—PROTECTOR v. LUMLEY (LORD), No. 292, *ante*.

303. ———.]—By the law of the land, no alien born can take by grant, devise, or other purchase, any freehold or chattels real for his own benefit, but can & does, in such cases, take for the benefit of the Crown. Yet this disability being neither a penalty nor forfeiture, the alien cannot demur to an information filed for discovering the place of his birth, in order to establish the fact of alienage.—*DUPLESSIS v. A.-G.* (1753), 1 Bro. Parl. Cas. 415; 1 E. R. 658; *sub nom.* *A.-G. v. DUPLESSIS*, Park. 144, H. L.; *affd.* S. C. *sub nom.* *A.-G. v. DUPLESSIS* (1751), 2 Ves. Sm. 286.

Annotations.—*Refd.* *Finch v. Finch* (1752), 2 Ves. Sen. 191; *Muckleston v. Brown* (1801), 6 Ves. 32; *Stickland v. Aldridge* (1804), 9 Ves. 516. *Mentd.* *Podmore v. Gunning* (1836), 7 Sm. 614; *Ritson v. Stordy* (1855), 3 Sm. & G. 230; *Wallgrave v. Tobbs* (1855), 2 K. & J. 313; *Barrow v. Wadkin* (1857), 24 Beav. 1; *Davies v. Lynch* (1868), 16 W. R. 1207.

304. ———.]—**Penalties involved.]—**An information to discover deft.'s stock of pepper, deft. demurred because it would subject him to a penalty, the year not being past:—*Held*: the demurrer would be allowed.—*A.-G. v. CRESNER* (1710), Park. 279; 145 E. R. 779.

305. ———.]—*A.-G. v. VINCENT*, No. 276, *ante*.

306. Interrogatories—Relator allowed to exhibit—To adduce additional evidence.]—An information was filed under Marriage Act, 1823 (c. 76), & some evidence adduced in support of it, which, at the hearing, was deemed insufficient by the ct.:—*Held*: liberty would be given to the relator to exhibit interrogatories for the purpose of adducing additional evidence.—*A.-G. v. SEVERNE* (1841), 1 Coll. 313; 13 L. J. Ch. 399; 3 L. T. O. S. 279; 8 Jur. 595; 63 E. R. 135; *subsequent proceedings* (1845), 11 L. J. Ch. 104.

307. Production of documents—Necessity for—Where partially set forth in answer—& part of title of Crown.]—A.-G. v. LAMBE, No. 288, *ante*.

308. ———.]—**Where defendant misrepresents—Or misconceives nature of document.]—**By an information filed by A.-G. on behalf of the Crown it was prayed that it might be declared that the Crown was seized in fee of the foreshore of the sea opposite to the County of E., & that a commission might issue to ascertain the seaward boundaries of the manors of G. & L. W.

In revenue proceedings to which, by R. S. C., Ord. 62, the rules under the Jud. Acts do not apply, where deft. distinctly & positively states that a document forms or supports his title, & does not contain anything impeaching his defence or forming or supporting the title or case of the other side, if the ct. is satisfied, on consideration of the whole case, that deft. erroneously represents or misconceives the nature of the document, such document is not protected from production.—*A.-G. v. EMERSON* (1882), 10 Q. B. D. 191; 52 L. J. Q. B. 67; 48 L. T. 18; 31 W. R. 191, C. A.

Annotations.—*Consd.* *Bulman & Dixon v. Young, Ehlers* (1883), 49 L. T. 736; *Roberts v. Oppenheim* (1884), 28 Ch. D. 724; *Frankenstein v. Gavin's Cycle Cleaning & Insee. Co.*, [1897] 2 Q. B. 62. *Apld.* *A.-G. v. Newcastle-upon-Tyne Corpn.*, [1897] 2 Q. B. 384. *Consd.* *British Assocn. of Glass Bottle Manufacturers v. Nettlefold*,

forfeitures:—*Held*: defts. were bound to answer the charges fully; & could not protect themselves on the ground that the facts charged would, if coupled with other facts, show that they had been guilty of a conspiracy to defraud the Crown.—*A. G. v. CONROY* (1838), 2 Jo. Ex. Ir. 791.—*IR.*

Sect. 6.—English informations: Sub-sect. 2. Part 11. Sects. 1 & 2: Sub-sect. 1.]

[1912] 1 K. B. 369. *Reid. Morris v. Edwards* (1890), 15 App. Cas. 309; *Budden v. Wilkinson*, [1893] 2 Q. B. 432; *Yorkshire Provident Life Assc. v. Gilbert & Livingston* (1895), 14 It. 411; *A.-G. v. Newcastle-upon-Tyne Corpn.*, [1899] 2 Q. B. 478; *Milbank v. Milbank*, [1900] 1 Ch. 376; *British Assocn. of Glass Bottle Manufacturers v. Nettlefold*, [1912] A. C. 709.

309. Discovery—Crown's right same as subject's—Omission to except within time—Does not bar Crown.]—The Crown has the same right of discovery against a subject as one subject has against another, but cannot be compelled to give discovery to a subject. The fact that on an information defts.' answer has not been excepted to within six weeks does not preclude the Crown from obtaining discovery in the usual way.

Where an informant has made out his right to discovery in respect of part of the foreshore of a port the whole of which is claimed by defts. under one consolidated title, he is entitled to discovery in respect of the whole foreshore of everything which may repel defts.' title, & acts of ownership by defts. on other parts of the property are admissible as evidence & are subject-matter of discovery.—*A.-G. v. NEWCASTLE-UPON-TYNE CORPN.*, [1897] 2 Q. B. 384; 66 L. J. Q. B. 593; 77 L. T. 203, C. A.; *subsequent proceedings*, [1899] 2 Q. B. 478, C. A.

Annotat on:—Consd. Re Société les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1.

310. —Crown cannot be compelled to give discovery to subject.]—*A.-G. v. NEWCASTLE-UPON-TYNE CORPN.*, No. 309, *ante*.

Sec, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

311. Evidence—Whether oral or by affidavit.]—Under the Rules of 1866, r. 10, s. 4, for regulating the procedure & practice of the revenue side of the Ct. of Exch. in suits by English information, evidence is to be taken *vivâ voce*, not only where there is an actual conflict of evidence, but also in those cases where the judge may require, not merely a verification of statements, but an explanation of them, so as to enable him properly to understand what it is on which either party relies.—*A.-G. v. METROPOLITAN DISTRICT RY. CO.* (1880), 5 Ex. D. 218; 42 L. T. 342; 28 W. R. 376, C. A.

312. Pleadings—Demurrable where multifarious.]—An information stated bequests, for young men of a particular corp., & also divers other bequests for young men, without alleging that these other bequests were of an homogeneous character with the former:—*Held*: it was demurrable for multi-

farioussness.—*A.-G. v. GOLDSMITHS' CO.* (1834), 5 Sim. 670; 4 L. J. Ch. 22; 58 E. R. 491. *Annotations:—Reid. Campbell v. Mackay* (1836), 1 My. & Cr. 603; *Sanders v. Kelsey* (1846), 10 Jur. 833.

313. Amendment—Irregularly made—Remedy for.]—Where irregular amendments have been made in an information, the proper course is to move that the record be restored to its original state, & not that the information be taken off the file.—*A.-G. v. COOPER* (1837), 3 My. & Cr. 258; 1 Jur. 790; 40 E. R. 923, L. C.

Annotations:—Consd. Re Mathews, Oates v. Mooney, [1905] 2 Ch. 460. *Reid. Brown v. Sawyer* (1841), 3 Beav. 598.

314. —Information & bill—Affidavit in support by plaintiff's solicitor sufficient—Where Attorney-General approves.]—An affidavit in support of a special application for leave to amend an information & bill, the amendments of which had been approved by the A.-G. was made by the solr. alone, pltf. not joining:—*Held*: the rule that pltf. must join in the case of a bill did not apply to an information & bill, & that the affidavit was sufficient.—*A.-G. v. CASTLEFORD LOCAL BOARD OF HEALTH* (1871), 6 Ch. App. 853; 40 L. J. Ch. 636; 25 L. T. 371; 19 W. R. 1074, L.J.J.

315. Application for dismissal of action—Discontinuance by Crown—Want of prosecution—R. S. C., Ord. 68, not applicable.]—An English information was filed in the name of the A.-G. on behalf of Her Majesty against deft. in respect of certain foreshore rights, & after the proceedings had been continued for some time, & considerable expense incurred by deft., the solr. acting on behalf of A.-G. informed deft.'s solr. that the A.-G. did not propose to proceed further with the information. Deft. applied to the ct. for an order directing that the information should be dismissed, or judgment entered for deft. & that the Crown should pay deft. his costs of & incidental to the information & suit:—*Held*: (1) the ct. had no power to dismiss the information for want of prosecution, as by R. S. C., Ord. 68, r. 2, the rules providing for the dismissal of an action for want of prosecution were not applied to proceedings on the revenue side; (2) as the suit had not been determined the Crown could not be ordered to pay deft.'s costs.—*A.-G. v. WILLIAMSON* (1889), 60 L. T. 930, D. C.

316. Costs—Crown not liable for defendant's costs—Suit not determined.]—*A.-G. v. WILLIAMSON*, No. 315, *ante*.

Liability of Crown to pay costs.]—*See CONSTITUTIONAL LAW*, Vol. XI., pp. 533, 534, Nos. 364–373.

Right of Crown to receive costs.]—*See CONSTITUTIONAL LAW*, Vol. XI., pp. 531–534, 535, Nos. 349–363, 376, 377.

Part II.—Petition of Right.

SECT. 1.—IN GENERAL.

Liability of the Crown & Crown servants to be sued, *see, generally*, CONSTITUTIONAL LAW, Vol. XI., pp. 523–525, Nos. 284–293.

317. Purposes.]—(1) The proceeding by petition of right exists only for the purpose of reconciling the dignity of the Crown & the rights of the subject, & to protect the latter against any injury arising from the acts of the former, but it is no part of its object to enlarge or alter those rights (LORD COTTENHAM, C.).

(2) When a petition of right is referred to the Lord Chancellor with the indorsement "let right be done" if such right be subject to certain rules

of proceeding for its ascertainment & enforcement, those rules must still be followed & the rights of the parties will be bound by all equities to which they are properly subject.—*MONCKTON v. A.-G.* (1850), 2 Mac. & G. 402; 42 E. R. 150, L. C.

Annotation:—As to (1) *Reid. Dyson v. A.-G.*, [1911] 1 K. B. 410.

318. —.]—*TOBIN v. R.*, No. 352, *post*.

319. —.]—The Crown is not responsible by way of petition of right, for an infringement of a patent by the Lords of the Admty., but the remedy is by action against the wrongdoers.

The only cases in which the petition of right is open to the subject are, where the land or goods

or money of a subject have found their way into the possession of the Crown, & the purpose of the petition is to obtain restitution, or, if restitution cannot be given, compensation in money, or where the claim arises out of a contract, as for goods supplied to the Crown or for the public service. It is in such cases only that instances of petitions of right having been entertained are to be found in our books (COCKBURN, C.J.).—*FEATHER v. R.* (1865), 6 B. & S. 257; 35 L. J. Q. B. 200; 12 L. T. 114; 29 J. P. 709; 122 E. R. 1191.

Annotations.—*Refd.* *Thomas v. R.* (1874), L. R. 10 Q. B. 31. *Mentd.* *Dixon v. London Small Arms Co.* (1876), 1 App. Cas. 632; *Roden v. London Small Arms Co.* (1876), 46 L. J. Q. B. 213; *Windsor & Annapolis Ry. v. R. & Western Counties Ry.* (1886), 11 App. Cas. 607; *Income Tax Special Purposes Comrs. v. Pemsell*, [1891] A. C. 531; *Goldsmiths' Co. v. Wyatt*, [1907] 1 K. B. 95; *Johnstone v. Pedlar*, [1921] 2 A. C. 262; *Rhonda's Claim*, [1922] 2 A. C. 339.

320. —.—.]—A petition of right, presented by a subject to the Crown, under Petitions of Right Act, 1860 (c. 34), is not confined to claims in respect of specific chattels or land, but may be in respect of a breach of contract resulting in unliquidated damages.—*THOMAS v. R.* (1874), L. R. 10 Q. B. 31; 44 L. J. Q. B. 9; 31 L. T. 439; 39 J. P. 21; 23 W. R. 176.

Annotations.—*Consd.* *Windsor & Annapolis Ry. v. R. & Western Counties Ry.* (1886), 11 App. Cas. 607; *De Keyser's Royal Hotel, De Keyser's Royal Hotel v. R.*, [1919] 2 Ch. 197.

321. —.—.]—A petition of right is merely an amicable litigation taken by the consent of the Crown against the Crown itself (LORD ATKINSON).—*HOLLINSHEAD v. HAZLETON*, [1916] 1 A. C. 428; 85 L. J. P. C. 60; 114 L. T. 292; 32 T. L. R. 177; 60 Sol. Jo. 139; [1916] H. B. R. 85, H. L.

Annotations.—*Mentd.* *Hamilton v. Caldwell* (1919), 88 L. J. P. C. 173.

322. Whether necessary to proceed by—Contract with Government department—Breach of contract.—A builder who has entered into a contract under seal with the Comrs. of His Majesty's Works & Public Buildings to build a post office is entitled to maintain an action against them for breach of the contract, & is not obliged to proceed by petition of right.—*GRAHAM v. PUBLIC WORKS & BUILDINGS COMRS.*, [1901] 2 K. B. 781; 70 L. J. K. B. 860; 85 L. T. 96; 65 J. P. 677; 50 W. R. 122; 17 T. L. R. 540; 45 Sol. Jo. 538, D. C.

Annotations.—*Apld.* *Roper v. Public Works Comrs.*, [1915] 1 K. B. 45. *Refd.* *Public Works Comrs. v. Pontypriid Masonic Hall Co.*, [1920] 2 K. B. 233.

323. Claim under deceased Sovereign's will.—(1) The Ct. of Ch. has nothing to do with the probate of a will of personal estate. The will of a deceased Sovereign of this realm is no exception to this general rule, & though probate has been

refused or cannot be granted of such a will, yet the Ct. of Ch. will not interfere. *Semble*: a petition of right is the proper remedy in such a case.

(2) It is not competent to the King, or rather to his responsible advisers, to refuse capriciously to put into a due course of investigation any proper question raised on a petition of right.—*RYVES v. WELLINGTON (DUKE)* (1846), 9 Beav. 579; 15 L. J. Ch. 461; 8 L. T. O. S. 66; 10 Jur. 697; 50 E. R. 467.

Annotations.—*As to* (1) *Refd.* *Esquimalt & Nanaimo Ry. v. Wilson*, [1920] A. C. 358. *As to* (2) *Refd.* *Dyson v. A.-G.*, [1911] 1 K. B. 410.

324. Declaration as to contract—Made with servant of Crown.—An action by a subject against a servant of the Crown for a declaration as to the meaning of a contract made by him on behalf of the Crown is not maintainable, any more than an action on the contract itself would be maintainable, the subject's remedy being by petition of right.—*HOSIER BROTHERS v. DERBY (EARL)*, [1918] 2 K. B. 671; 87 L. J. K. B. 1009; 119 L. T. 351; 34 T. L. R. 477, C. A.

Declaratory judgment against Crown, see CONSTITUTIONAL LAW, Vol. XI., p. 524, No. 292.

325. Rights subject to equities.—*MONCKTON v. A.-G.*, No. 317, ante.

Right of subject to petition Sovereign, see CONSTITUTIONAL LAW, Vol. XI., p. 515, Nos. 168, 169.

Recovery of compensation on entry on land by Crown, see CONSTITUTIONAL LAW, Vol. XI., p. 546, Nos. 498 *et seq.*

SECT. 2.—FOR WHAT PURPOSES AVAILABLE.

SUB-SECT. 1.—RECOVERY OF REALTY.

326. Land—General rule.—*FEATHER v. R.*, No. 319, ante.

327. —.—.]—*THOMAS v. R.*, No. 320, ante.

328. —.—.]—*Crown legally in possession of.*—*ANON.* (1515), Keil. 178; 72 E. R. 354.

Annotations.—*Refd.* *Hornbee, Petitioner* (1691), Freem. K. B. 331. *Bankers' Case* (1695), Skin. 601.

329. —.—.]—*Ancient possessions of Crown—Occupied by Board of Ordnance.*—1 & 2 Geo. 4, c. 69, vesting certain lands in the officers of the ordnance, & enabling them to bring & defend actions in respect of such lands, does not include lands which are part of the ancient possessions of the Crown though in the occupation of the Board of Ordnance. The title to such lands, therefore, cannot be tried in ejectment, but must be the subject of a petition of right.—*DOE d. LEIGH v.*

PART II. SECT. 2, SUB-SECT. 1.

328 l. Land—Crown legally in possession of—Occupied by Board of Ordnance.—*TEMPLEMORE (LORD) v. H. M. ORDNANCE (PRINCIPAL OFFICERS)* (1833), 1 Ir. L. Rec. N. S. 73.—*IR.*

l. —.—.]—*Whether to compel grant of patent for.*—*CANADA CENTRAL Ry. Co. v. R.* (1874), 20 Gr. 273.—*CAN.*

m. —.—.]—*A petition of right will not lie to compel the Crown to grant a patent of lands.*—*CLARKE v. R.* (1886), 1 Exch. C. R. 182.—*CAN.*

n. —.—.]—*Mandamus inappropriate.*—*Mandamus* does not lie to compel a minister of the Crown to issue a Crown grant; the remedy is by petition of right.—*CLARKE v. LANDS & WORKS CHIEF COMR.* (1886), 1 B. C. R. pt. 11, 328.—*CAN.*

o. —.—.]—*HALL v. R.* (1900), 7 B. C. R. 480.—*CAN.*

PART II. SECT. 1.

322 i. Whether necessary to proceed by—Contract with Government department—Breach of contract.—*PALMER v. HUTCHINSON* (1881), 6 App. Cas. 619.—*S. AF.*

322 ii. —.—.]—*DODSON v. WHITE* (1909), 6 E. L. R. 144.—*CAN.*

d. —.—.]—*To obtain equitable relief.*—*ROGERS v. SHORTIS* (1863), 10 Gr. 243.—*CAN.*

e. —.—.]—*Pltfs. sought to enjoin defts. from selling the roadbed, & franchises connected with a line of railway & to set aside a conveyance in trust made for that purpose. The Crown was the principal party interested in the conveyance, & the injunction was virtually against the Crown.*—*Held*: the Crown was not liable to be sued, or restrained by injunction, & pltfs. remedy was by petition of right.—*MONTREAL & EUROPEAN SHORT LINE Ry. Co. v. STEWART* (1887), 20 N. S. R. 115.—*CAN.*

f. Whether an "action."—*A petition of right is not an "action."*—*MILLAR v. R.*, [1921] 49 O. L. R. 93; 19 O. W. N. 458; 58 D. L. R. 585.—*CAN.*

g. Whether barred by Canada Petition of Right Act, 1876, s. 19.—*R. v. DOUTRE* (1884), 9 App. Cas. 745.—*CAN.*

h. Where declaratory judgment sought.—*A petition of right is not open to objection on the ground that a merely declaratory judgment or order is sought thereby.*—*QU'APPELLE, LONG LAKE & SASKATCHEWAN RAILROAD & STEAMBOAT Co. v. R.* (1901), 7 Exch. C. R. 105; 21 C. L. T. 283.—*CAN.*

k. —.—.]—*Not against Crown—Crown affected by result—Procedure by petition of right inapplicable.*—*ESQUIMALT & NANAIMO Ry. Co. v. WILSON, ESQUIMALT & NANAIMO Ry. Co. v. DUNLOP*, [1919] 3 W. W. R. 961; 46 D. L. R. 541.—*CAN.*

Sect. 2.—For what purposes available: Sub-sects. 1, 2 & 3, A., B. & C.]

ROE (1841), 8 M. & W. 579; H. & W. 159; 11 L. J. Ex. 57; 151 E. R. 1169.

Annotation :—*Reid*. Taylor v. Best (1854), 14 C. B. 487.

330. — Situated abroad—Vested in Crown by a colonial statute.]—The fiction that the Queen is at all times present in all parts of her dominions does not give jurisdiction to the cts. in this country, acting *in personam*, to entertain a petition of right in respect of lands situate in a colony, & vested in Her Majesty for the purposes of the province by an act of the provincial Legislature.—*Re HOLMES* (1861), 2 John. & H. 527; 70 E. R. 1167; *sub nom.* HOLMES v. R., 31 L. J. Ch. 58; 5 L. T. 548; 8 Jur. N. S. 76; 10 W. R. 39.

Annotations :—*Consd.* Doss v. Secretary of State for India in Council (1875), L. R. 19 Eq. 509; *Reiner v. Salisbury* (1876), 2 Ch. D. 378; *Companhia de Mocambique v. British South Africa Co., De Sousa v. British South Africa Co.*, [1892] 2 Q. B. 358.

331. — After office found.]—*HORNER v. R.* (1885), Robertson's Civil Proceedings by & against the Crown, 333.

332. Rentcharge.]—*WICKS v. DENNIS* (1589), Leon. 190; 74 E. R. 175.

Annotation :—*Reid*. R v. Hornby (1695), 5 Mod. Rep. 19.

333. — Held by Crown on intestacy—Subsequent claim by next of kin.]—The trustees & exors. of a will administered the estate, & upon its being decided in a suit instituted for the purpose that there was an intestacy, & no heir or next of kin being discovered, the trustees assigned the leasehold property to the Solr. for the Treasury, to be held for the benefit of the Crown. Pltfs., six years afterwards, established their claim as next of kin of testator, & the ct. declared them entitled :—*Held* : the Crown was not chargeable with interest on the rents & profits received from the property while in its possession.—*Re GOSMAN* (1881), 17 Ch. D. 771; 50 L. J. Ch. 624; 45 L. T. 267; 29 W. R. 793, C. A.

334. Gales—Relief against forfeiture.]—The gaveler of the Forest of Dean granted a gale or colliery to B., a free miner, he paying for all coal brought out 2d. per ton, & so working the colliery as to gain 24,000 tons a year, provided that if the coal gotten should not amount to that quantity, a minimum rent of £200 should be paid. The gale not being worked, the galee paid the minimum rent for several years, but upon arrears of rent becoming due, the gaveler declared the gale forfeited, & entered into possession thereof. Ten months after the declaration of forfeiture the galee tendered the arrears of rent, which were refused. Upon a petition of right by the representatives of the galee to be reinstated in the gale :

—*Held* : upon breach of that condition by non-payment there had been a legal forfeiture & a right of the Crown to re-enter, & the arrears not having been tendered, nor any proceedings taken within six months, there was no power in the ct. to relieve against the forfeiture. *Qu.* : whether the ct. could have relieved if the petition of right had been presented within six months of the forfeiture.—*Re BRAIN* (1874), L. R. 18 Eq. 389; 44 L. J. Ch. 103; 31 L. T. 17; 38 J. P. 773; 22 W. R. 867.

Annotations :—*Reid*. A.-G. of Victoria v. Ettershank (1875), L. R. 6 P. C. 354. *Mentd.* Davis v. Adams, Davis v. Howard, James v. R. (1876), 24 W. R. 944.

335. — Grant of—Applicant dying before grant made.]—Under Dean Forest (Mines) Act, 1838 (c. 43), ss. 23 & 38, gales can be granted only to free miners of the Forest of Dean. A free miner died after an application for a gale, but before the gale has been actually granted :—*Held* : the gale cannot be granted to his devisees not being free miners.—*JAMES v. R.* (1877), 5 Ch. D. 153; 46 L. J. Ch. 516; 36 L. T. 903; 25 W. R. 615, C. A.

SUB-SECT. 2.—RECOVERY OF CHATTELS.

336. General rule.]—*TOBIN v. R.*, No. 352, *post*.

337. —.]—*FEATHER v. R.*, No. 319, *ante*.

338. —.]—*THOMAS v. R.*, No. 320, *ante*.

339. Ship & cargo.]—*CONRADUS OF COLON'S CASE* (1275), Y. B. 4 Edw. 1, fo. 5.

Annotations :—*Consd.* Tobin v. R. (1864), 4 Now Rep. 274; *Feather v. R.* (1865), 6 B. & S. 257.

SUB-SECT. 3.—MONEY CLAIMS.

A. Under Contract.

340. General rule.]—*FEATHER v. R.*, No. 319, *ante*.

341. — Contract limiting future action.]—During the war neutral shipowners, being aware of the liability of neutral ships to be detained in British ports, obtained an undertaking from the British Government that if they sent a particular ship to this country with a particular class of cargo she should not be detained. On the faith of that undertaking the owners sent the ship to a British port with a cargo of the stipulated kind. The British Government subsequently withdrew their undertaking & refused her clearance. On a petition of right for damages for breach of contract :—*Held* : the Government's undertaking was not enforceable in a ct. of law, it not being within the competence of the Crown to make a

PART II. SECT. 2, SUB-SECT. 3.—A.

p. Liquidated sum due—Work done for Government—Contract not conforming to statute.]—The Crown cannot be held responsible under a petition of right on an executory contract entered into by the Department of Public Works for the performance of works placed by law under the control of the department, when the agreement was not made in conformity with 31 Vict. c. 12, s. 7.—*WOOD v. R.* (1877), 7 S. C. R. 634.—*CAN.*

q. — Unauthorised expenditure.]—*WOOD v. R.* (1877), 7 S. C. R. 634.—*CAN.*

r. — Creation of debt—Effect of Order in Council.]—Prior to confederation T. was cutting timber on territory in dispute between the old Province of C. & the Province of N. B., the former having granted him a licence for the purpose. To utilise timber cut, he

had to send it down the St. J. river, & it was seized by the authorities of N. B., & only released upon payment of fines. T. continued business for some years, paying fines to N. B. each year, until he was compelled to abandon it. The two provinces subsequently established a boundary line, & a commission was appointed to determine the state of accounts between them in respect to such territory. Their report was verified by the Dominion auditor. Both before & after confederation T. urged the collection of the amount so found from N. B. for the indemnity of the persons who had suffered by the dispute. By an Order in Council of the Dominion Government (to whom it was alleged the indebtedness of N. B. was transferred by the B. N. A. Act), it was declared that a sum was due to T., which would be paid on his obtaining the consent of the govts. of O. & Q. therefor. Consent was obtained & payments on account

made by the Dominion Government first to T. & afterwards to the suppliant, to whom T. had assigned the claim. The suppliant, not being able to obtain payment of the balance due, proceeded to recover it by petition of right, to which petition deft. demurred, on the ground that the claim was not founded upon contract & was not properly a subject for petition of right :—*Held* : there being no previous indebtedness shown to T. either from the Province of N. B., the Province of C., or the Dominion Govt., the order in council did not create any debt between T. & the Dominion Govt. which could be enforced by petition of right.—*R. v. DUNN* (1885), 11 S. C. R. 385.—*CAN.*

s. — Salvage of government ship.]—A petition of right will not lie for salvage services rendered to a steamship belonging to the Dominion gov't.—*COUETTE v. R.* (1892), 3 Exch. C. R. 82.—*CAN.*

contract which would have the effect of limiting its power of executive action in the future.—*REDERIKTIEBOLAGET AMPHITRITE v. R.*, [1921] 3 K. B. 500; 91 L. J. K. B. 75; 126 L. T. 63; 37 T. L. R. 985.

342. Liquidated sum due—Extra work & material.—*THAMES IRON WORKS & SHIP BUILDING CO., LTD. v. R.* (1869), 10 B. & S. 33; 20 L. T. 318.

343. — Demurrage under charterparty.—A charterparty provided that the cargo should be discharged at an average rate per working day, etc., demurrage to be paid at a certain rate per day & *pro rata*, employed beyond the time allowed for discharging. The charterers were the Lords Comrs. of the Admty. On appeal from a judgment in the trial of a petition of right:—*Held*: the owners were entitled to demurrage.—*YBOMAN v. R.*, [1904] 2 K. B. 429; 73 L. J. K. B. 904; 52 W. R. 627; 20 T. L. R. 524; 48 Sol. Jo. 491; 9 Com. Cas. 269, C. A.

Annotations:—*Mentd.* *Houlder v. Weir*, [1905] 2 K. B. 267; *Nelson v. Nelson Line (Liverpool)* (No. 3) (1907), 76 L. J. K. B. 531.

344. — Goods supplied to the Government.—*KYNOC, LTD. v. R.* (1909), *Times*, March 30, C. A.

345. Unliquidated damages for breach.—*THOMAS v. R.*, No. 320, ante.

346. — Acts or omissions of Crown officials.—It is settled law that a petition of right will lie for damages resulting from a breach of contract by the Crown, & it is immaterial whether the breach is occasioned by the acts or by the omissions of the Crown officials.—*WINDSOR & ANNAPOLIS RY. CO. v. R. & WESTERN COUNTIES RY. CO.* (1886), 11 App. Cas. 607; 55 L. J. P. C. 41; 55 L. T. 271; 51 J. P. 260; 2 T. L. R. 743, P. C.

Annotation:—*Refd.* *A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 508.

347. — Indemnity Act, 1920 (c. 48), s. 2 (1).—A ship belonging to resp. co. was, during the war, requisitioned on behalf of the Admty., & was taken under a charterparty in the form of a demise of the vessel to the Admty. on behalf of the Crown. While in the service of the Admty. under the charterparty, she was sunk by an enemy ship, & resps. took proceedings by petition of right to recover damages for the loss. On demurrer to the petition of right:—*Held*: the circumstance that the user of the ship was regulated by the terms of a charterparty did not alter the fact that she had been requisitioned during the war on behalf of the Crown, & therefore the claim for compensation fell within sect. 2 of the above Act, & must be assessed in the manner provided by that sect., & a petition of right would not lie.—*A.-G. v. ROYAL MAIL STEAM PACKET CO.*,

[1922] 2 A. C. 279; 91 L. J. K. B. 635; 127 L. T. 533; 38 T. L. R. 658, H. L.; *revog.* *S. C. sub nom.* *ROYAL MAIL STEAM PACKET CO. v. R.* (1921), 37 T. L. R. 897, C. A.

Annotations:—*Mentd.* *Reader v. S. E. & C. Ry. & L. & N. W. Ry.*, *Van den Berghs v. G. W. Ry.* (1921), 38 T. L. R. 14; *Ruffy-Arnell & Baumann Aviation Co. v. R.*, [1922] 1 K. B. 599.

348. — ——In 1918 two vessels belonging to the suppliant were requisitioned for the French coal trade on the terms that the owner would be paid market rates & not Blue Book rates. By Limitation of Freights (French Ports) Ord., 1918, no vessel in the French coal trade could take more than the limitation rate. The suppliant, having been paid the limitation rate, brought a petition of right to recover the difference between that rate & the free market rate apart from restriction. The Crown contended that the Ord. fixed the market rate, & that the effect of the above Act was that the petition of right did not lie:—*Held*: the petition of right was not barred by the Act.—*BROOKE v. R.*, [1921] 2 K. B. 110; 90 L. J. K. B. 521; 125 L. T. 183; 37 T. L. R. 375; 15 Asp. M. L. C. 205.

Annotation:—*Distd.* *A.-G. v. Royal Mail Steam Packet Co.*, [1922] 2 A. C. 279.

Crown servants—Dismissal at pleasure of Crown.—*See CONSTITUTIONAL LAW*, Vol. XI., pp. 505, 506, Nos. 77–83.

B. Under Statute.

349. Telegraph Acts, 1863 (c. 112), & 1868 (c. 110)—Costs of removing poles & wires.—*POSTMASTER-GENERAL v. GREAT WESTERN RY. CO.* (1889), 5 T. L. R. 714, H. L.

350. — Compensation—Damage caused by exercise of powers.—*ST. JAMES & PAUL MAIL ELECTRIC LIGHTING CO., LTD. v. R.* (1904), 73 L. J. K. B. 518; 90 L. T. 344; 68 J. P. 288.

See, generally. *TELEGRAPHS & TELEPHONES.*

Naval Prize Act, 1864 (c. 25)—Claim for prizes & cognate matters.—*See PRIZE LAW & JURISDICTION.*

Right to compensation under Defence Acts.—*See CONSTITUTIONAL LAW*, Vol. XI., pp. 546–549, Nos. 498–515.

Right to compensation under Public Authorities' Acts.—*See PUBLIC AUTHORITIES & PUBLIC OFFICERS.*

C. Arising out of Tort.

351. Whether petition of right lies for—Compensation for wrongful acts of Crown servants.—

A petition of right does not lie to recover compensation from the Crown for damage to the property of an individual, occasioned by the negligence of the servants of the Crown.—*CANTERBURY*

346 i. Unliquidated damages for breach—Acts or omissions of Crown officials.—Where there is a breach of a contract binding on the Crown a petition will lie for damages although the breach was occasioned by the wrongful acts of the Crown's officer or servant.—*JOHNSON v. R.* (1901), 24 C. L. T. 2; 8 Exch. C. R. 360.—*CAN.*

PART II. SECT. 2, SUB-SECT. 3.—B.

t. Customs Act, 1877—Drawback on ship materials—Refusal of Controller to grant.—Under Customs Act, 1877, the governor in council might make regulations for granting a drawback of the whole or part of the duty paid on materials used in C. manufactures. Such regulations were made:—*Held*: a petition of right would not lie upon a refusal by the controller of customs to grant a drawback in any particular case.—*MATTON v. R.* (1897), 5 Exch. C. R. 401.—*CAN.*

a. 8 Vict., c. 90.—Compensation.—A claim for compensation under 8 Vict. c. 90 is a proper subject for petition of right.—*R. v. YULE* (1899), 30 S. C. R. 24.—*CAN.*

b. Right to compensation under Expropriation Act.—*R. v. NIMMONS* (1892), 1 Torr. L. R. 415.—*CAN.*

c. ——*CARTWRIGHT v. R.* (1906), 3 W. L. R. 47.—*CAN.*

d. ——*GIBB v. R.* (1914), 15 Exch. C. R. 157.—*CAN.*

PART II. SECT. 2, SUB-SECT. 3.—C.

e. Whether petition of right lies for—Acts authorised by statute.—*HALIFAX CITY RY. CO. v. R.* (1877), 2 Exch. C. R. 433.—*CAN.*

351 i. — For wrongful acts of Crown servants.—A petition of right does not lie to recover compensation from the Crown for damage occasioned by the negligence of its servants to

the property of an individual using a public work.—*R. v. McFARLANE* (1882), 7 S. C. R. 216.—*CAN.*

351 ii. ——*MUSKOKA MILL CO. v. R.* (1881), 28 Gr. 563.—*CAN.*

351 iii. ——*QUEBEC CITY v. R.* (1894), 24 S. C. R. 420.—*CAN.*

351 iv. ——A petition of right will not lie against the Crown for injuries sustained by one who falls upon a step of a public building by reason of ice which had formed there & which the caretaker, employed by the minister of public works, had failed to remove or to cover with sand.—*LEPROHON v. R.* (1894), 4 Exch. C. R. 100.—*CAN.*

351 v. ——*JULIEN v. R.* (1896), 5 Exch. C. R. 238.—*CAN.*

351 vi. ——*GRAHAM v. R.* (1902), 8 Exch. C. R. 331.—*CAN.*

351 vii. ——*MONTGOMERY v. R.* (1907), 11 Exch. C. R. 158; 27 C. L. T. 668.—*CAN.*

Sect. 2.—For what purposes available: Sub-sect. 3, C., D. & E.]

(VISCOUNT) v. A.-G. (1843), 1 Ph. 306; 4 State Tr. N. S. 767; 12 L. J. Ch. 281; 7 Jur. 224; 41 E. R. 648, L. C.

*Annotations:—*Consd. Tobin v. R. (1864), 16 C. B. N. S. 310. *Refd.* Feather v. R. (1865), 35 L. J. Q. B. 200; Thomas v. R. (1874), L. R. 10 Q. B. 31. *Mentd.* Philliter v. Phippard (1847), 11 Q. B. 347; Vaughan v. Taff Vale Ry. (1858), 3 H. & N. 743; Grill v. General Iron Screw Colliery Co. (1866), 35 L. J. C. P. 321; Bainbridge v. Postmaster-General, [1906] 1 K. B. 178.

352. — Remedy against wrongdoer.]—

(1) A petition of right will not lie to recover compensation for a wrongful act done by a servant of the Crown in the supposed performance of his duty, nor will it lie to recover unliquidated damages for a trespass.

The commander of a Queen's ship employed in the suppression of the slave trade seized a schooner belonging to the suppliant, which he suspected of being engaged in slave traffic, & it being inconvenient to take her to a port for condemnation, caused her to be burnt:—*Held*: this was not a case for a petition of right, the remedy for the wrong, if any were done, being against the person who did it.

(2) Whatever was the form of procedure the substance seems always to have been the trial of the right of the subject as against the right of the Crown to property or an interest in property which had been seized for the Crown, & if the subject succeeded, the judgment only enabled him to recover possession of that specified property, or the value thereof if it had been converted to the King's use. The form of trying this question has gone through several changes. Traverse of office found, *monstrans de droit*, & petition of right were the forms in most frequent use (ERLE, C.J.).—TOBIN v. R. (1864), 16 C. B. N. S. 310; 4 New Rep. 274; 33 L. J. C. P. 199; 10 L. T. 762; 10 Jur. N. S. 1029; 12 W. R. 838; 2 Mar. L. C. 45; 143 E. R. 1148.

*Annotations:—*As to (1) Consd. Feather v. R. (1865), 6 B. & S. 257; Windsor & Annapolis Ry. v. R. & Western Counties Ry. (1886), 11 App. Cas. 607; Nireaha Tamaki v. Baker, [1901] A. C. 561. *Refd.* Thomas v. R. (1874), L. R. 10 Q. B. 31. As to (2) *Refd.* A.-G. v. De Keyser's Royal Hotel, [1920] A. C. 508. *Generally, Mentd.* Johnstone v. Pedlar, [1921] 2 A. C. 262.

353. — — — — —.]—FEATHER v. R., No. 319, ante.

354. — Unliquidated damages for trespass.]—

—TOBIN v. R., No. 352, ante.

355. —.]—HABUIS' PETITION OF RIGHT

(1903), Robertson's Civil Proceedings by & against the Crown, 341.

Unliquidated damages for breach of contract.]—

See Nos. 320, 316, 317, 348, ante.

356. Statutory right to "claim for damages or compensation"—Claim arising out of tort included.]

—On a petition of right against the Govt. for damages done to petitioner's tenement by the execution of reclamation & other works upon the foreshore in front of it:—*Held*: under Crown Suits Ordinance of 1876, s. 18 (2), the Crown could be sued in tort.—A.-G. OF STRAITS SETTLEMENTS v. WEMYSS (1888), 13 App. Cas. 192; 57 L. J. P. C. 62; 58 L. T. 358, P. C.

*Annotations:—*Refd. Shenton v. Smith, [1895] A. C. 229. *Mentd.* Mellor v. Walmesley, [1905] 2 Ch. 164.

Under Defence Acts.]—See CONSTITUTIONAL LAW, Vol. XI, pp. 546–549, Nos. 498–515.

D. Salaries, Pensions, etc. of Crown Servants.

357. General rule—Persons engaged in military service.]—The engagements between the Crown & those engaged in its military service are purely

voluntary on the part of the Crown & afford no ground for a petition of right.—MITCHELL v. R. (1890), [1896] 1 Q. B. 121, n.; 6 T. L. R. 332, C. A. *Annotations:—*Apld. Leaman v. R., [1920] 3 K. B. 663. *Mentd.* Raphael Steamship v. Brandy (1911), 80 L. J. K. B. 1067.

358. — — — — — Applied to soldiers.]—The rule that all engagements between those in the military service of the Crown & the Crown are voluntary only on the part of the Crown applies as well to private soldiers as to officers. A petition of right will not lie by a private soldier for his pay.—LEAMAN v. R., [1920] 3 K. B. 663; 89 L. J. K. B. 1073; 124 L. T. 159; 36 T. L. R. 835.

359. Pension charged on Consolidated Fund—Claim by assignee.]—The assignee of a pension charged on the Consolidated Fund filed a bill in the Exchequer against the Lords of the Treasury for payment of the pension:—*Held*: the Ct. of Exch. had no jurisdiction in such a case, & pltf.'s only remedy was by petition of right.—OLDHAM v. LORDS OF THE TREASURY (*circa* 1800–1827), cited in 6 Sim. 220; 58 E. R. 576.

*Annotation:—*Refd. Thomas v. R. (1874), L. R. 10 Q. B. 31.

360. Superannuation allowance—Compensation for loss by abolition of office.]—C. was in receipt of a salary of £135, & certain personal allowances alleged to be equivalent to £300 a year. The office was abolished & C., who had then entered upon his tenth year of service, was appointed to another office. The salary of this office was increased so as to be equal to that of C.'s former office, but compensation in respect of his personal allowances was refused.

C. retired on superannuation, & was granted an allowance on the full scale permitted by Superannuation Act, 1859 (c. 26), calculated on the amount of his salary at the time. He applied to the Comrs. of the Treasury for an increased allowance on the ground that he ought to have enjoyed a compensation allowance, making the income of his second office equal to that which he had lost by the abolition of his first, & that his superannuation allowance ought to have been calculated on the amount of his salary as increased by such allowance. The application was refused. C. filed a petition of right making the same claim. On demurrer:—*Held*: the right of a public servant to a superannuation allowance was not one which could be enforced by a civil tribunal, & the decision of the Comrs. of the Treasury on all points concerning such an allowance was final.—COOPER v. R. (1880), 14 Ch. D. 311; 49 L. J. Ch. 490; 42 L. T. 617; 28 W. R. 611.

*Annotations:—*Folld. Yorke v. R., [1915] 1 K. B. 852. *Mentd.* Hollinshead v. Hazleton, [1916] 1 A. C. 428.

361. —.]—Under Superannuation Acts, 1834 (c. 24), & 1859 (c. 26), the decision of the Comrs. of the Treasury, either as to whether a person is entitled to a superannuation allowance, or as to the basis upon which an allowance shall be calculated, is final, & no Ct. of law has jurisdiction in the matter.—YORKE v. R., [1915] 1 K. B. 852; 84 L. J. K. B. 947; 112 L. T. 1135; 31 T. L. R. 220.

Crown servants & public officers—Dismissal at pleasure of Crown.]—See CONSTITUTIONAL LAW, Vol. XI, pp. 505–507, Nos. 76–88.

E. Other

362. Annuity—Granted by Crown.]—EVERLE'S CASE (1305), Ryley's Placita Parliamentaria 251; 1 Nov. Pari. 104, No. 52.

*Annotations:—*Consd. Bankers' Case (1695), Skin. 601. *Expld.* Thomas v. R. (1874), L. R. 10 Q. B. 31.

363. — Charged on the excise by letters patent.]—A petition was exhibited in the Exchequer

for the allowance of letters patent granted by Charles II. for payment of an annuity out of the excise, & judgment was for petitioner. On writ of error in the Exch. Chamber:—*Held*: the patentee's proper remedy was by petition to the King.—*R. v. HORNBY* (1699), 5 Mod. Rep. 20; Comb. 270; 87 E. R. 500; *sub nom.* BANKERS' CASE, 11 Hargrave St. Tr. 136; 14 State Tr. 1; Skin. 601; O. Bridg. 254, n., 620; *sub nom.* HORNBY, WILLIAMSON, SMITH & STONE'S PETITION, 1 Freem. K. B. 331, H. L.

Annotations:—*Consd.* Macbeath v. Haldimand (1786), 1 Term Rep. 172. *Distd.* R. v. Treasury Lords Comrs. (1835), 4 Ad. & El. 288. *Consd.* Thomas v. R. (1874), 44 L. J. Q. B. 9; *Re De Keyser's Royal Hotel, De Keyser's Royal Hotel v. R.*, [1919] 2 Ch. 197. *Reid.* De Bode v. R. (1848), 13 Q. B. 364; Tobin v. R. (1864), 16 C. B. N. S. 310; Hettihewage Siman Appu v. Queen's Advocate (1884), 9 App. Cas. 571; Windsor & Annapolis Ity. v. R. & Western Counties Ity. (1886), 11 App. Cas. 607. *Mentd.* It. v. Roberts (1744), 2 Stra. 1208; *Ex p.* Colebrooke (1819), 7 Price, 87; Giles v. Grover (1832), 2 Moo. & S. 197; Meath Bp. v. Winchester (1836), 3 Bing. N. C. 183; *Re De Bode, Re Canterbury* (1840), 2 Ph. 85; *Re Kingsbury Collieries & Moore's Contract*, [1907] 2 Ch. 259.

364. Probate duty—Excess paid.—(1) Prosecutor applied for a mandamus to debts. to return excess of probate duty:—*Held*: a mandamus ought not to issue, for there was a specific remedy by petition of right inasmuch as the money was in the hands of the Crown.

(2) The fiat of the Crown must be obtained before the Crown is harassed by a suit, but everybody knows that that fiat is granted as a matter, I will not say of right, but as a matter of invariable grace by the Crown whenever there is a shadow of claim, nay, more, it is the constitutional duty of the A.-G. not to advise a refusal of the fiat unless the claim is frivolous (BOWEN, L.J.).—*R. v. INLAND REVENUE COMRS., Re NATHAN* (1884), 12 Q. B. D. 461; 53 L. J. Q. B. 220; 51 L. T. 46; 48 J. P. 452; 32 W. R. 543, C. A.

Annotations:—*As to* (1) *Consd.* R. v. Lambourn Valley Ry. (1888), 22 Q. B. D. 463; Income Tax Special Purposes Comrs. v. Pemsel, [1891] A. C. 531. *Reid.* R. v. Income Tax Comrs., *Ex p.* Cape Copper Mining Co. (1888), 57 L. J. Q. B. 513; *R. v. St. Giles, Camberwell Vestry* (1897), 61 J. P. 217; *Smith v. Charles, Bristol General* (1897), 60 J. P. 217.

Mentd. Leakey & Haig v. Duglinsor (1891), 65 L. T. 152; Lord Advocate v. Income Tax General Comrs. of Cuninghame Division of Ayrshire (1895), 3 Tax Cas. 395; *R. v. Incorporated Law Soc.*, [1895] 2 Q. B. 456; *Peebles v. Oswaldtwistle U. D. C.*, [1897] 1 Q. B. 384; *R. v. Leicester Grdus.*, [1899] 2 Q. B. 632.

365. Excise duty—Amount paid for provisional licence—Licence taken away under Licensing Act, 1904 (c. 23).—*MALKIN v. R.*, [1906] 2 K. B. 886; 75 L. J. K. R. 884; 95 L. T. 448; 70 J. P. 506; 22 T. L. R. 807; 50 Sol. Jo. 683.

Annotation:—*Mentd.* R. v. Newington Licensing JJ., *Ex p.* Makeinson (1914), 111 L. T. 72.

366. Income tax—Recovery of money paid under erroneous assessment—Statutory remedy provided.—The proper remedy for persons aggrieved by income tax assessments is by appeal in the manner provided by the Income Tax Acts. A person who neglects that remedy cannot bring a petition of right to recover money paid under assessments alleged to be erroneous.—*HOLBORN VIADUCT LAND CO., LTD. v. R.* (1887), 52 J. P. 341; 2 Tax Cas. 228, D. C.

367. Debt due from Sovereign or Government of annexed territory—Remedy against Secretary of State.—The suppliant, by petition of right, sought to recover from the Crown a debt alleged to have become due from the Sovereign of Oude before that province was annexed to the territories of the East India Co.:—*Held*: assuming the Co. became liable to pay the debt by reason of the annexation, the Secretary of State in Council for India, & not the Crown, was, by Government of

India Act, 1858 (c. 106), the person against whom the suppliant must seek his remedy.—*FIRTH v. R.* (1872), L. R. 7 Exch. 365; 41 L. J. Ex. 171; 26 L. T. 774; 21 W. R. 19.

Annotation:—*Mentd.* Salaman v. Secretary of State in Council of India, [1906] 1 K. B. 613.

368. Conquered state.—A petition of right alleged that, before the outbreak of war between the late South African Republic & Great Britain, gold, the produce of a mine in the Republic owned by the suppliants, had been taken from the suppliants by officials acting on behalf of the Govt. of the Republic; that the Govt. by the laws of the Republic was liable to return the gold or its value to the suppliants; & that by reason of the conquest & annexation of the territories of the Republic by Her late Majesty the obligation of the Govt. of the Republic towards the suppliants in respect of the gold was now binding upon His Majesty the King:—*Held*: the petition disclosed no right on the part of the suppliants which could be enforced against His Majesty in any municipal ct.—*WEST RAND CENTRAL GOLD MINING CO. v. R.*, [1905] 2 K. B. 391; 74 L. J. K. B. 753; 93 L. T. 207; 53 W. R. 660; 21 T. L. R. 562; 49 Sol. Jo. 552, D. C.

Annotations:—*Reid.* Salaman v. Secretary of State in Council of India, [1906] 1 K. B. 613. *Mentd.* Akionair-novo Obschestvo A. M. Luther v. Sagor, [1921] 1 K. B. 456; *Re Ferdinand (EX-Tsar of Bulgaria)*, [1921] 1 Ch. 107.

369. Distribution of money received under convention—On account of losses incurred by British subjects.—A., a British subject, claimed to be entitled to compensation for certain losses suffered by him through confiscation of his property in the first French Revolution. The Govts. of England & France entered into conventions respecting compensation to be afforded to British subjects. The English Govt. received all the money agreed upon between the two Govts. as the amount of compensation, & undertook to satisfy all the claimants. An Act of Parliament was passed declaring how claims were to be preferred & liquidated. A. presented his claim to appointed under the Act, & adopted the modes of proceeding provided by it; his claim was rejected. After payment of the claims which were established to the satisfaction of the comrs., a surplus remained, which, in accordance with one of the provisions of the Act, was paid over to the Lords of the Treasury. A. proceeded to make his claim afresh under a petition of right:—*Held*: he had no remedy except under the provisions of the statute.—*DE BODE (BARON) v. R.* (1851), 3 H. L. Cas. 449; 6 State Tr. N. S. 237; 10 E. R. 176, H. L.; *affy.* (1849), 13 Q. B. 364, Ex. Ch.; (1845), 8 Q. B. 208.

Annotations:—*Consd.* Rustumjee v. R. (1876), 1 Q. B. D. 487. *Reid.* Wadsworth v. Spain (Queen) (1851), 17 Q. B. 171; Tobin v. R. (1864), 16 C. B. N. S. 310; Thomas v. R. (1874), L. R. 10 Q. B. 31; Rustumjee v. R. (1876), 2 Q. B. D. 69; Marconi's Wireless Telegraph Co. v. R., [1918] 1 K. B. 193; Ruffy-Arnell & Baumann Aviation Co. v. R., [1922] 1 K. B. 599. *Mentd.* Nelson v. Bridport (1846), 10 Jur. 871; Wall's Case (1848), 6 Moo. P. C. C. 216; Boosey v. Davidson (1849), 18 L. J. Q. B. 174; Kingswood v. Birmingham (1861), 8 Jur. N. S. 37; *R. v. Birmingham* (1861), 1 B. & S. 763; *R. v. Brixton Prison, Re Perolval* (1907), 76 L. J. K. B. 619.

370. Distribution of money received under treaty of peace—On account of debts due to British subjects.—By a treaty the Emperor of China agreed to pay to the British Govt. a sum of money on account of debts due to British subjects from certain Chinese merchants who had become insolvent being largely indebted to British subjects. The money having been received by the British Govt.:—*Held*: a petition of right would not lie by one of the British subjects to obtain payment of a sum of money alleged to be due to

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him from one of the Chinese merchants.—*RUSTOMJEE v. R.* (1876), 2 Q. B. D. 69; 46 L. J. Q. B. 238; 30 L. T. 190; 25 W. R. 333, C. A.

*Annotations:—*Consd. *West Rand Central Gold Mining Co. v. R.*, [1905] 2 K. B. 391. *Reid. Burnand v. Rodocanachi* (1881), 44 L. T. 538. *Mentd. R. v. Income Tax Special Purposes Commrs., Ex p. Cape Copper Mining Co.* (1888), 50 L. T. 455.

371. Interest—Money paid to Treasury Solicitor on intestacy—Subsequent proof of existence of next of kin.—*Re GOSMAN*, No. 333, *ante*.

SECT. 3.—PRACTICE AND PROCEDURE.

See Petitions of Right Act, 1860 (c. 34).

372. The petition—Sufficiency of.—*DE DOHSE v. R.* (1886), 66 L. J. Q. B. 422, n.; 3 T. L. R. 114, H. L.

*Annotations:—*Mentd. *Dunn v. R.*, [1896] 1 Q. B. 116; *Gould v. Stuart* (1896), 75 L. T. 110; *Raphael Steamship v. Brandy* (1911), 105 L. T. 116; *Hales v. R.* (1918), 34 T. L. R. 589; *Leaman v. R.*, [1920] 3 K. B. 663.

373. ———.—*WEST RAND CENTRAL GOLD MINING Co. v. R.*, No. 368, *ante*.

374. ———.—*May be amended by court.*—The ct. has power under Petitions of Right Act, 1860 (c. 34), to amend a petition of right, the operation of the word "amendment" in that sect. not being limited to the pleadings of the Crown.—*RUFFY-ARNELL & BAUMANN AVIATION Co. v. R.*, [1922] 1 K. B. 599; 91 L. J. K. B. 417; 126 L. T. 573; 38 T. L. R. 210; 66 Sol. Jo. 270.

375. Parties—Death of suppliant—Personal representative entitled to proceed.—The administrator of the suppliant in a petition of right may bring error on a judgment given against his testator.—*DE BODE (BARON) v. R.* (1849), 13 Q. B. 364; 12 L. T. O. S. 106; 13 J. P. 604; 14 Jur. 970; 116 E. R. 1302, Ex. Ch.; *affg.* (1845), 8 Q. B. 208; *affd.* (1851), 3 H. L. Cas. 449, H. L.

*Annotations:—*Mentd. *Nelson v. Bridport* (1846), 10 Jur. 871; *Wall's Case* (1848), 6 Moo. P. C. C. 216; *Boosey v. Davidson* (1849), 18 L. J. Q. B. 174; *Wadsworth v. Spain (Queen)* (1851), 17 Q. B. 171; *Kingswood v. Birmingham* (1861), 8 Jur. N. S. 37; *R. v. Birmingham* (1861), 1 B. & S. 763; *Tobin v. R.* (1864), 16 C. B. N. S. 310; *Thomas v. R.* (1874), L. R. 10 Q. B. 31; *Rustomjee v. R.* (1876), 2 Q. B. D. 69; *R. v. Brixton Prison, Re Percival* (1907), 76 L. J. K. B. 619; *Marconi's Wireless Telegraph Co. v. R.*, [1918] 1 K. B. 193; *Ruffy-Arnell & Baumann Aviation Co. v. R.*, [1922] 1 K. B. 599.

376. ———.—*No abatement.*—On the hearing of a petition of right, upon which an injunction was granted, one petitioner had died, & after the hearing & before judgment was pronounced, the other had also died. On motion to discharge an order for irregularity obtained as of course, under which the order made on the petition had been drawn up, *nunc pro tunc*.—*Held*: the motion must be refused as judgment might be given notwithstanding the death of the party affected after the hearing.—*MONCKTON v. A.-G.* (1852), 19 L. T. O. S. 278, L. C.

377. ———.—*Bankruptcy of suppliant—Assignee entitled to proceed.*—Leave given to a petitioner who had presented a petition of right to file a bill against the A.-G., notwithstanding the issuing of a commission under the petition of right.—*Re*

ROLT (1859), 4 De G. & J. 44; 33 L. T. O. S. 141; 7 W. R. 403; 45 E. R. 18, L. C.

378. ———.—*Joinder of—Joint tenants may sue separately.*—Where there are two joint tenants of land in the hands of the Crown, each may separately sue a petition of right.—*ANON.* (1400), Jenk. 78; 145 E. R. 56.

See, also, CONSTITUTIONAL LAW, Vol. XI., p. 580, No. 815.

379. ———.—*Not Crown with another respondent.*—*Seem*: it is wrong to join anyone with the Queen as resp. to a petition of right.—*KIRK v. R., A.-G. v. KIRK* (1872), L. R. 14 Eq. 558.

*Annotations:—*Reid. *Palmer v. Hutchinson* (1881), 6 App. Cas. 619. *Mentd. Dyson v. A.-G.*, [1911] 1 K. B. 410.

See, also, Petitions of Right Act, 1860 (c. 34), s. 5.

380. Flat—Necessity for.—The ct. has no jurisdiction to order a petition of right to be set down for trial without the fiat of the Queen having been first obtained.—*Re MITCHELL'S PETITION OF RIGHT* (1896), 12 T. L. R. 458, C. A.

*Annotation:—*Reid. *Ruffy-Arnell & Baumann Aviation Co. v. R.*, [1922] 1 K. B. 599.

381. ———.—*Prerogative to grant or refuse.*—

(1) The prerogative of the Crown, to plead double, or to plead & demur without leave of the ct., has not been taken away by Petitions of Right Act, 1860 (c. 34), which regulates the proceedings on a petition of right.

(2) To a petition of right under the above Act in which the suppliant sought compensation from the Crown for the seizure & destruction on the coast of Africa by one of Her Majesty's ships of a vessel of the suppliant as being wrongly supposed to be engaged in the slave trade, the Crown pleaded "that the several averments & statements contained in the said petition of right are not nor is any of them true in fact":—*Held*: the Crown was entitled to deny in such general terms the whole of the statements in the petition relied upon by the suppliant as constituting his claim.

(3) The words of Petitions of Right Act, 1860 (c. 34), s. 2, so far from giving the subject a right of action against the Queen absolutely which every subject has who claims to have an action against a fellow subject by suing out a writ are: "The petition shall be left with the Secretary of State for the Home Department, in order that the same may be submitted to Her Majesty for Her Majesty's gracious consideration & in order that Her Majesty if she shall think fit may grant her fiat that right be done." The prerogative is recognised & remains (*ERLE, C.J.*).—*TOBIN v. R.* (1863), 14 C. B. N. S. 505; 2 New Rep. 245, 359; 32 L. J. C. P. 216; 8 L. T. 392, 730; 9 Jur. N. S. 1130; 11 W. R. 701, 915; 143 E. R. 543; *subsequent proceedings* (1864), 16 C. B. N. S. 310.

*Annotations:—*As to (1) *Consd. R. v. Diplock* (1868), 10 B. & S. 174. *Reid. Re Société les Affréteurs Réunis & Shipping Controller*, [1921] 3 K. B. 1. As to (2) *Reid. Thomas v. R.* (1874), L. R. 10 Q. B. 31.

382. ———.—*Granted as matter of grace—Unless claim frivolous.*—*R. v. INLAND REVENUE COMRS., Re NATHAN*, No. 364, *ante*.

383. ———.—*Investigation before refusal—By Crown or ministers.*—*RYVES v. WELLINGTON (DUKE)*, No. 323, *ante*.

384. ———.—*Effect of granting—Not "step in proceedings"*—*Within Arbitration Act, 1889 (c. 49),*

PART II. SECT. 3.

3741. The petition—May be amended at trial.—A petition of right may be amended at the trial.—*SMYLLIE v. R.* (1900), 20 C. L. T. 225; 27 A. R. 172.—*CAN.*

1. ———.—*May be amended after verdict—To meet new facts.*—The Ct.

will amend a petition to meet new facts even after verdict.—*WILLIAMS v. R.* (1883), 1 N. Z. L. R. 217.—*N.Z.*

3801. Flat—Necessity for.—A petition of right cannot be filed without the fiat of the Crown being first obtained.—*PIGGOTT & SON v. R.* (1915), 19 Exch. C. R. 485.—*CAN.*

38011. ———.—*CAPE TOWN, TOWN COUNCIL v. HOSKINS* (1904), 21 S. C. 393.—*S. AF.*

3811. ———.—*Prerogative to grant or refuse.*—Under Crown Redress Act, 1871, s. 2, the Governor has discretion in regard to indorsing his consent on a petition of right.—*R. v. FERGUSON*, 2 J. R. 20.—*N.Z.*

s. 4.]—(1) Where a petition of right, founded on a contract with the Crown which contains a written agreement to submit differences to arbn., has been filed in the High Ct. of Justice, proceedings in the petition may in a proper case be stayed under sect. 4 of the above Act, but where the matters in dispute include an important constitutional question the proceedings in the petition will not be stayed.

(2) The granting of the King's fiat is not a step in the proceedings within the meaning of sect. 4 of the above Act.—*ANGLO-NEWFOUNDLAND DEVELOPMENT Co. v. R.*, [1920] 2 K. B. 214; 89 L. J. K. B. 570; 122 L. T. 731; 84 J. P. 121; 14 Asp. M. L. C. 548, C. A.

Annotation:—As to (1) & (2) *Reid. Ruffy-Arnell & Baumann Aviation Co. v. R.*, [1922] 1 K. B. 599.

385. Pleading—Crown may plead double—& deny truth of averments generally.—*TOBIN v. R.*, No. 381, *ante*.

386. — Set-off & counterclaim—Crown entitled to plead.—Under Petitions of Right Act, 1860 (c. 34), s. 7, the Crown is entitled to plead a set-off in answer to a petition of right (*KELLY, C.B.*).—*DE LANCEY v. R.* (1871), L. R. 6 Exch. 286; 40 L. J. Ex. 198; 24 L. T. 800; 19 W. R. 932; *affd.* (1872), L. R. 7 Exch. 140, Ex. Ch.

Annotation:—*Mentd. Macfarlane v. Lord Advocate*, [1894] A. C. 291.

387. — — — — —.—*THOMAS v. R.* (1875), Bitt. Prac. Cas. 25; 1 Char. Cham. Cas. 71.

388. — — — — —.—(1) Stat. Limitations has relation only to actions between subject & subject, the Crown cannot be bound by it (*BLACKBURN, J.*).

(2) Petitions of Right Act, 1860 (c. 34), s. 7, extends to a petition of right set-off (*LUSH, J.*).—*RUSTOMJEE v. R.* (1876), 1 Q. B. D. 487; 45 L. J. Q. B. 249; 34 L. T. 278; 24 W. R. 428; *affd.* 2 Q. B. D. 69, C. A.

Annotations:—*Generally, Mentd. Burnand v. Rodocanachi* (1881), 44 L. T. 538; *R. v. Income Tax Special Purposes Comrs., Ex p. Cape Copper Mining Co.* (1888), 59 L. T. 455; *West Rand Central Gold Mining Co. v. R.*, [1905] 2 K. B. 391.

389. — Statute of Limitations—No right to plead.—*RUSTOMJEE v. R.*, No. 388, *ante*.

390. — Application by Crown for extension of time—No bar to demurrer.—Upon an application to confirm an inquisition upon a petition of right, the Crown required time to make answer thereto:—*Held*: the time should be extended & the A.-G. should not be precluded from demurring.—*Re R. & VON FRANTZIUS* (1858), 2 De G. & J. 126; 6 W. R. 288; 44 E. R. 936; *sub nom. Ex p. VON FRANTZIUS*, 27 L. J. Ch. 368, L. C.

Annotations:—*Reid. Re Petition of Right of Holt* (1859), 33 L. T. O. S. 141. *Mentd. Thomas v. R.* (1874), L. R. 10 Q. B. 31.

391. Stay of proceedings—Mode of application for—On ground that same question previously decided.—Where the Crown sought to stay proceedings in a petition of right, on the ground that the same question had been decided against the same parties in a suit in this ct., it was held that the proper mode of application for such order was by petition in the former cause.—*A.-G. v. ROBSON* (1848), 11 L. T. O. S. 217, L. C.

392. — Grounds for—Agreement to submit to arbitration—Not when important constitutional question involved.—*ANGLO-NEWFOUNDLAND DEVELOPMENT Co. v. R.*, No. 384, *ante*.

393. Discovery of documents—Crown's right as against suppliant.—In a petition of right the Crown is entitled as against the suppliant to an order for the discovery of documents by the combined effects of Petitions of Right Act, 1860 (c. 34), s. 7, & R. S. C., Ord. 31, r. 12.—*TOMLINE v. R.* (1879), 4 Ex. D. 252; 48 L. J. Q. B. 453; 40 L. T. 542; 27 W. R. 651, C. A.

Annotation:—*Reid. Re Société les Affréteurs Réunis & Shipping Controller*, [1921] 3 K. B. 1.

394. Evidence—Crown not entitled to cross-examine suppliant as to copy of memorandum—Without accounting for original—Adjournment to enable search for original.—On the trial of a petition of right:—*Held*: (1) counsel for the Crown was not entitled to cross-examine the suppliant as to a copy of a memorandum signed by him, without giving proper evidence to account for the absence of the original, & proving a search in the proper department; (2) the ct. would adjourn to enable the Crown to make & prove such a search; (3) counsel for the Crown, in summing up, might comment on the whole of the evidence.—*SCOTT v. R.* (1861), 2 F. & F. 634, N. P.

395. — Right of Crown counsel to comment on whole of evidence—In summing up.—*SCOTT v. R.*, No. 394, *ante*.

396. Trial—Place of—Sufficiency of indorsement.—A petition of right was addressed to the King in his Ct. of Exch., & concluded with a prayer that he would be pleased to order that right be done, & to indorse his royal declaration thereon to that effect, & that he would refer the petition, with such order & declaration thereon, to the Barons of His Majesty's Exchequer. The King indorsed the petition, "Let right be done":—*Held*: the Ct. of Exch. had no jurisdiction to adjudicate upon the matter.—*Re PERING* (1837), 2 M. & W. 873; 5 Dowl. 750; Murph. & H. 223; 6 L. J. Ex. 253; 150 E. R. 1012.

397. — Whether by judge or judge & jury—Discretion of court.—Under Petitions of Right Act, 1860 (c. 34), s. 7, the ct. has a discretion as to whether the trial of a petition of right is to be by a judge or by a judge & jury.—*MARCONI'S WIRELESS TELEGRAPH Co. v. R.*, [1918] 1 K. B. 193; 87 L. J. K. B. 242; 118 L. T. 200; *sub nom. Re MARCONI'S TELEGRAPH Co.'s PETITION OF RIGHT*, 34 T. L. R. 115; 62 Sol. Jo. 103, C. A.

398. Judgment for suppliant—Joint default by Crown & another.—*Re BANDA & KIRWEE BOOTY, KINLOCH v. R. & SECRETARY OF STATE FOR INDIA*, [1884] W. N. 80, C. A.

399. — Application that petition may be taken as confessed—Motion to Divisional Court—Or to judge taking motions.—An application by a suppliant under Petitions of Right Act, 1860 (c. 34), s. 8, that his petition may be taken as confessed, may be made by motion to a Div. Ct. or to a judge taking motions for judgment in ct., & the costs of such motion will be allowed.—*DAY v. R.* (1921), 90 L. J. K. B. 1085; 124 L. T. 669; 37 T. L. R. 303, D. C.

400. Appeal—From decision of King's Bench—Lies to Her Majesty in Council.—An appeal lies to Her Majesty in Council from a decision of the Ct. of Q. B. on a petition of right.—*R. v. DEMERS*, [1900] A. C. 103; 69 L. J. P. C. 5; 81 L. T. 795, P. C.

386 i. Pleading — Counterclaim.—There cannot be a counterclaim to a petition of right.—*SPIERS v. CORBOULD* (1896), 4 B. C. R. 386.—CAN.

s. — Crown may amend at any time.—Under Manitoba Petition of Right Act, s. 11, the Crown may amend its pleadings at any time.—

CANADIAN DOMESTIC ENGINEERING CO., LTD. v. R., [1919] 2 W. W. R. 762.—CAN.

Sect. 3.—Practice and procedure. Part III. Sects. 1 & 2.

401. Costs—Recovery of by Crown—No right to proceed by extent.]—R. v. COWING (1877), Robertson's Civil Proceedings by & against the Crown, 194, 398.

402. — Of motion that application may be taken as confessed—Allowed.]—DAY v. R., No. 399, ante.

See, further, CONSTITUTIONAL LAW, Vol. XI., p. 530, Nos. 341 et seq.

Part III.—Scire Facias.

SECT. 1.—ON THE REVENUE SIDE OF THE KING'S BENCH DIVISION.

403. Grounded upon a judgment.]—A scire facias is always grounded upon a judgment.—R. v. DERWENTWATER'S (LORD) TENANTS (1717), Bunb. 14; 145 E. R. 578.

404. Whether Crown entitled to proceed by scire facias or extent—Debtor insolvent.]—A sci. fa. was brought against a general receiver upon his bond, & afterwards an immediate extent was moved for against him, upon an affidavit that one of his bail was bkpt. & he decayed in his credit:—*Held*: the King was at liberty to proceed either by sci. fa., or extent, or both.—R. v. BLUNDELL (1721), Bunb. 74; 145 E. R. 600.

405. — Debtor solvent.]—(1) The Crown has not an election to proceed against the debtor either by extent or sci. fa., where the debtor is not insolvent.

(2) Sci. fa. may issue in vacation, but only where the debt which it seeks to recover is actually due before the end of the preceding term, or it must be tested as of the next subsequent term.

(3) Where a writ of sci. fa. is moved to be set aside as having been irregularly issued, the motion may be made after appearance.—R. v. PEARSON (1816), 3 Price, 288; 146 E. R. 264.

Annotations:—As to (3) Rejd. Dean v. R. (1846), 15 M. & W. 475. Generally, Mentd. Giles v. Grover (1832), 9 Bing. 128.

406. May be sued in King's name—Where forfeiture granted.]—ALLEN'S CASE (1594), Cro. Eliz. 326; 78 E. R. 575.

407. For what purposes available—To recover Crown debt of record.]—A.-G. v. SEWELL, No. 1, ante.

408. — Recovery on bond to Crown—For revenue purposes.]—YALE v. R. (1721), 6 Bro. Parl. Cas. 27; 2 E. R. 910, H. L.

Annotation:—Rejd. R. v. Ellis (1849), 4 Exch. 652.

409. — Of general receiver.]—R. v. BLUNDELL, No. 404, ante.

410. — For excise duties.]—To sci. fa. on a bond to the Crown for excise duties, it was pleaded that payment had been made after the day, but before writ issued:—*Held*: acceptance

by the Crown in satisfaction was insufficient.—R. v. ELLIS (1814), 1 Price, 23; 145 E. R. 1318.

411. — By committee of lunatic.]—On an application for a fiat for an extent made by a committee of a lunatic against a preceding committee, on the usual bond to the Crown:—*Held*: the remedy of the party was by sci. fa.—*Re LACY* (1822), 10 Price, 135; 147 E. R. 267.

412. — — — — —.]—A bond given to the Crown by a committee of a lunatic, on his appointment, is within 33 Hen. 8, c. 39, s. 50, & the Crown is entitled to treat it as matter of record, & have a sci. fa. thereon.—R. v. CHAMBERS (1813), 11 M. & W. 776; 1 L. T. O. S. 315; 152 E. R. 1018.

413. — For penalty.]—A.-G. v. WINSTANLEY (1831), 5 Bli. N. S. 130; 2 Dow. & Cl. 302; 9 L. J. O. S. Ex. 92; 6 E. R. 740; *sub nom.* R. v. WINSTANLEY, 1 Cr. & J. 434, H. L.

Annotations:—Mentd. R. v. Sedgwick (1835), Tyr. & Gr. 94; Flather v. Stubbs (1842), 2 Q. B. 614.

414. — On recognisance to the Crown.]—R. v. WIBLIN (1825), 2 C. & P. 10, N. P.

415. — — — — —.]—R. v. BINGHAM (1829), 3 Y. & J. 101; 148 E. R. 1110; *affd.* (1830), 1 Cr. & J. 245, Ex. Ch.

416. — Inquisition finding indebtedness—On extent.]—A sci. fa. was brought in the name of the A.-G. against E., setting forth that an extent had issued against K., & an inquisition was taken thereon, which found E. indebted to K., & prayed that debt. should show cause why the Crown should not have execution for the debt:—*Held*: the jury would be directed to find, as they did, for the Crown.

Debts are not bound till the teste of the inquisition.—A.-G. v. ELWELL (1725), Bunb. 199; 145 E. R. 646.

417. — For excise duties.]—A.-G. v. NEWMAN (1815), 1 Price, 438; 145 E. R. 1455.

418. Parties—Suit against two—Recognisance of four persons.]—Where a sci. fa. against two debts. on a joint & several recognisance of four persons, without averring the other two to be dead:—*Held*: this was bad.—R. v. YOUNG (1794), 2 Anst. 448; 145 E. R. 931.

Annotations:—Folld. R. v. Chapman (1796), 3 Anst. 811. Mentd. Cocks v. Brower (1843), 11 M. & W. 51.

h. Costs—Security for to Crown not of right—Delay in application.]—Where, by a letter a sum was offered by the Crown in settlement of the suppliant's claim, an application by the Crown for security for costs was refused, on the ground that the power of ordering a party to give security for costs was a matter of discretion & not of right, & on the ground of delay in making the application.—WOOD v. R. (1877), 7 S. C. R. 631.—CAN.

k. — — — — —.]—ATLANTIC & LAKE SUPERIOR RY. CO. v. R. (1903), 23 C. L. T. 101; 8 Exch. C. R. 189; 2 O. W. R. 51.—CAN.

l. — Taxation as between subject & subject.]—In dealing with the question of costs, upon a petition of right, the same rule will be applied as if the question was one between

subject & subject.—MUSKOKA MILL CO. v. R. (1881), 28 Gr. 563.—CAN.

PART III. SECT. 1.

m. Grounded upon matter of record.]—A sci. fa. can only issue on a matter of record.—LAVERY v. DUFFIN (1833), Alc. & N. 295.—IR.

n. Nature of.—Not a prerogative writ.]—R. v. HAMMOND (1846), 3 Kerr. 181.—CAN.

o. — Civil not criminal proceeding—Recognizance to keep peace.]—R. v. SHIPMAN (1860), 6 U. C. L. J. O. S. 19.—CAN.

p. Whether Crown entitled to proceed by scire facias—Or action in name of official.]—R. v. MCPHERSON (1864), 15 C. P. 17.—CAN.

q. May be sued in Crown's name—By surety against co-surety.]—R. v.

LAND (1847), 3 U. C. R. 277.—CAN.

r. — — — — —.]—The surety in a Crown bond, having paid the full amount, will be permitted to proceed by sci. fa., in the name of the Crown, against his co-surety, for a contribution.—R. v. DENNIS (1833), Hayes, & Jo. 194.—IR.

s. — — — — —.]—A surety paying a debt to the Crown may have the benefit of the Crown process in the same cases in which an ordinary surety might have the benefit of a judgment at the suit of a subject.—R. v. FAY (1878), 4 L. R. Ir. 606.—IR.

t. Parties—Joint & several obligors.]—The Crown may have sci. fa. against one or against all of the joint & several obligors of a bond, but the proceedings must be against all or each one.—R. v. MCPHERSON (1864), 15 C. P. 17.—CAN.

419. — — — Bond of three persons.]—A joint *sci. fa.* on a recognisance against two on a bond of three is bad.—*R. v. CHAPMAN* (1796), 3 Anst. 811; 145 E. R. 1047.

420. Issue of writ—In vacation.]—*R. v. PEARSON*, No. 405, *ante*.

421. — — — Before return day of inquisition—Mere irregularity.]—Upon a *sci. fa.* to recover a sum of money found due to the Crown by an inquisition taken under a commission to find debts, it appeared the commission was returnable Apr. 15, 1843. The *sci. fa.* was tested Mar. 30, 1843:—*Held*: its having issued before the return day of the commission was a mere irregularity & not a ground of error.—*DEAN v. R.* (1846), 15 M. & W. 475; 3 Dow. & L. 714; 15 L. J. Ex. 236; 7 L. T. O. S. 233; 10 J. P. 567; 153 E. R. 937, Ex. Ch.

422. Error in recital—Scire facias founded on inquisition—Wrong inquisition recited.]—Two extents issued against defts., & two inquisitions were taken thereon. By the last inquisition A. was found indebted to P. & B. was also found indebted to him. Two writs of *sci. fa.* were sued out against A. & B. By mistake the wrong inquisition was recited in each writ:—*Held*: the two writs should be quashed.—*R. v. PETERS* (1714), 4 Price, 182, n.; 146 E. R. 433, n.

423. — — — Misrecital of inquisition—Leave to amend.]—Where a *sci. fa.* founded on an inquisition, misrecited the inquisition, & fixed by such recital a day on which the debt had been found to be due differing from the true day named as in the inquisition:—*Held*: the ct. would give leave, on cause being shown, to amend the writ.—*R. v. SCOTT* (1817), 4 Price, 181; 146 E. R. 432.

424. Motion to set aside—As having been irregularly issued—May be made after appearance.]—*R. v. PEARSON*, No. 405, *ante*.

425. Pleading—Bond for excise duties—Plea of payment—Sufficiency of.]—*R. v. ELLIS*, No. 410, *ante*.

426. — — — Statute of Limitations.]—The above statute may be pleaded to a *sci. fa.* issued by the Crown against the drawer of a bill of exchange in the hands of the Crown debtor & which has been seized by the sheriff under an inquisition on the prerogative process.—*R. v. MORRALL* (1818), 6 Price, 24; 146 E. R. 730.

Annotation:—*Mentd. Lambert v. Taylor* (1825), 4 B. & C. 138.

As to whether Crown bound by statutes, see, generally, STATUTES.

a. When writ returnable.]—*R. v. MCKAY* (1886), 26 N. B. R. 256.—CAN.
b. Venue.]—The selection of the venue is part of the prerogative.—*R. v. LINNEY* (1838), *Craw. & D. Abr. C.* 122.—IR.

c. — — — Change of—By consent of Attorney-General.]—*R. v. SHIPMAN* (1860), 6 U. C. L. J. O. S. 19.—CAN.

d. Pleading—Whether declaration necessary.]—As the declaration would only be a transcript of the writ, no declaration need be either filed or served.—*R. v. SHIPMAN* (1860), 6 U. C. L. J. O. S. 19.—CAN.

e. — — — Whether necessary to set out condition of recognisance.]—It is not the practice that the *sci. fa.* on a recognisance should set out the condition thereof; although it would be more correct so to do.—*R. v. HURLEY* (1840), 2 Dr. & War. 433.—IR.

f. — — —.]—A.-G. v. UPTON (1843), 7 I. L. R. 505.—IR.

g. — — —.]—*R. v. HAMILTON* (1850), 2 Ir. Jur. 252.—IR.

h. — — — Whether necessary to show that officer who took recognisance had

jurisdiction.]—*R. v. LINNEY* (1838), 1 Jebb. & S. 1.—IR.

k. — — —.]—An averment of facts showing the jurisdiction of the officer before whom the recognisance is taken, is necessary in a *sci. fa.*; though the statement be omitted in the recognisance itself. But the position in the *sci. fa.* of that averment is unimportant.—*R. v. HURLEY* (1840), 4 I. Eq. R. 637; 2 Dr. & War. 433; 1 Con. & Law. 473.—IR.

l. — — —.]—*R. v. LYNCH* (1844), 1 Jo. & Lat. 462.—IR.

m. — — — Plea of payment—Sufficiency of.]—Payment is a bad plea to a *sci. fa.* on a recognisance.—*R. v. WALKER* (1839), 1 I. L. R. 381.—IR.

426 i. — — — Whether Statute of Limitations pleadable—On receiver's recognisance.]—*R. v. BAXLEY* (1841), 4 I. Eq. R. 142; 1 Dr. & War. 213.—IR.

n. — — — Recognisance to keep peace—Whether conviction for assault & payment of fine a defence.]—*R. v. HARMER* (1859), 17 U. C. R. 555.—CAN.

SECT. 2.—ON THE CROWN SIDE OF THE KING'S BENCH DIVISION.

427. Prerogative judicial writ—Founded on record.]—The writ of *sci. fa.* to repeal or revoke grants or charters of the Crown is a prerogative judicial writ which, according to all the authorities, must be founded upon a record. All charters or grants of the Crown may be repealed or revoked when they are contrary to law, or uncertain, or injurious to the rights & interests of third persons, & the appropriate process for the purpose is by writ of *sci. fa.* If the grant or charter is to the prejudice of any person, he is entitled as of right to the protection of this prerogative remedy (LORD CHELMSFORD, C.).—*R. v. HUGHES* (1866), L. R. 1 P. C. 81; 3 Moo. P. C. C. N. S. 439; 35 L. J. P. C. 23; 14 L. T. 808; 12 Jur. N. S. 195; 14 W. R. 441; 16 E. R. 166, P. C.

428. Does not issue as of course.]—*Semble*: the writ of *sci. fa.* does not issue as of course.—*R. v. NELSON* (1842), 1 Web. Pat. Cas. 665, L. C. Annotations:—*Refd. R. v. Prosser* (1848), 11 Beav. 306; *R. v. Eastern Archipelago Co.* (1853), 22 L. J. Q. B. 196.

429. — — —.]—(1) A *sci. fa.* to repeal certain letters patent was issued under the fiat of the A.-G. The patentee applied to the A.-G. for the purpose of obtaining his direction that all further proceedings in the action should be stayed, or that a *nolle prosequi* should be entered. That application having been unsuccessful, the patentee applied to the ct. for an order to stay the proceedings in the action:—*Held*: the writ of *sci. fa.* was not granted as of course, & the A.-G., when applied to for his fiat, without which the writ could not issue, had an important duty to perform.

(2) The A.-G. conducts an action of *sci. fa.* according to his own judgment & discretion, & may, when he thinks fit, stay the proceedings therein, or enter a *nolle prosequi*, & the control which he exercises is subject only to the responsibility to which every public servant is liable in the discharge of his duty.—*R. v. PROSSER* (1848), 11 Beav. 306; 18 L. J. Ch. 35; 12 L. T. O. S. 509; 13 Jur. 71; 50 E. R. 834.

430. Who may sue by—The Crown.]—(1) The King may bring a *sci. fa.* to repeal letters patent whereby a market had been granted.

(2) A *sci. fa.* does not abate by the demise of the Crown.—*R. v. AIRES* (1717), 10 Mod. Rep. 354; 88 E. R. 762; *sub nom. R. v. EYRE*, 1 Sira. 43. Annotation:—*As to* (1) *Refd. Eastern Archipelago Co. v. R.* (1853), 2 E. & B. 856.

431. — — — Or private prosecutor—For

o. Application for relief—32 Hen. 8, c. 39—Absence of plea to scire facias—Attorney-General's assent wanting.]—Where the A.-G. had instituted a suit on behalf of the Crown, by *sci. fa.*, on a treasury bond, conditioned for the payment of duties, the ct. refused, upon a summary application on affidavits for relief under above Act to determine the question as to deft.'s liability, deft. not having pleaded to the *sci. fa.*, & the A.-G. not assenting to the application.—*R. v. STREET* (1842), 1 Kerr, 373.—CAN.

PART III. SECT. 2.

428 i. Does not issue as of course.]—A *sci. fa.* at the instance of a private prosecutor, to repeal Crown grants by letters patent, can only issue on the fiat of the A.-G., who may withhold his assent if no sufficient ground is shown.—*LEGAL v. DUFFY* (1854), 8 N. B. R. (3 All.) 57.—CAN.

428 ii. — — —.]—*SMITH v. MORRIS* (1837), 7 Nfld. L. R. 155.—NFLD.

428 iii. — — —.]—*R. v. PATTEE* (1871), 5 P. R. 292.—CAN.

Sect. 2.—On the Crown side of the King's Bench Division. Part IV.]

repeal of letters patent.]—A *sci. fa.* issued out of Ch., returnable in the Q. B., to repeal letters patent of the rectory of A.:—*Held*: a *sci. fa.* might be sued by any person who was prejudiced by a patent, as well as by the King.—*BREWSTER v. WELD* (1704), 6 Mod. Rep. 229; 87 E. R. 980.

Annotation.—*Refd. R. v. Bewdley Corp.* (1712), 1 P. Wms. 207.

432. ——— For repeal of charter.]—It is laid down, by all writers of authority who have treated this subject, that, if letters patent under the Great Seal have been granted on any false representation by which they are void, or if, after the grant, there has been a breach of any condition subsequent whereby they are voidable, the prerogative writ of *sci. fa.* to repeal them, may be sued out, either directly by the Crown, or, with the consent of the Crown, on the relation of an individual who may be injured; & in the subsequent proceedings it is wholly immaterial whether the *sci. fa.*, which in all cases must be in the name of the King, has issued with or without a relator (*LORD CAMPBELL, C.J.*).—*R. v. EASTERN ARCHIPELAGO CO.* (1853), 1 E. & B. 310; 22 L. J. Q. B. 196; 21 L. T. O. S. 33; 17 Jur. 491; 118 E. R. 452; *affd. sub nom. EASTERN ARCHIPELAGO CO. v. R.*, 2 E. & B. 856, Ex. Ch.; *subsequent proceedings, sub nom. R. v. EASTERN ARCHIPELAGO CO.* (1854), 4 De G. M. & G. 199, L. C.

Annotations.—*Refd. R. v. Hughes* (1866), L. R. 1 P. C. 81; *Riche v. Ashbury Railway Carriage Co.* (1874), L. R. 9 Exch. 224; *British South Africa Co. v. De Beers Consolidated Mines*, [1910] 1 Ch. 354. *Mentd. Jackson v. Beaumont* (1855), 19 J. P. 532; *Rendall v. Crystal Palace Co.* (1858), 22 J. P. 321; A.-G. of Duchy of Lancaster v. Devonshire (1884), 14 Q. B. D. 195; *Simpson v. A.-G.*, [1904] A. C. 476.

433. May be sued in King's name—For repeal of letters patent.]—*BUTLER'S CASE* (1680), 2 Vent. 344; *Freem. Ch.* 50; 86 E. R. 477, L. C.; *affd. sub nom. R. v. BUTLER* (1685), 3 Lev. 220, H. L.

Annotations.—*Folld. R. v. Aires* (1716), 10 Mod. Rep. 354. *Consd. Eastern Archipelago Co. v. R.* (1853), 2 E. & B. 856. *Refd. R. v. Bewdley Corp.* (1712), 1 P. Wms. 207. *Mentd. G. E. Ry. v. Goldsmid* (1884), 9 App. Cas. 927.

434. For what purposes available—Repeal of Crown grants—By letters patent.]—*R. v. MUSSARY* (1738), 1 Web. Pat. Cas. 41.

435. ——— For a market.]—*R. v. BUTLER* (1685), 3 Lev. 220; 83 E. R. 659, H. L.; *affg. S. C. sub nom. BUTLER'S CASE* (1680), 2 Vent. 344, L. C.

Annotations.—*Consd. R. v. Aires* (1716), 10 Mod. Rep. 354. *Refd. R. v. Bewdley Corp.* (1712), 1 P. Wms. 207; *Eastern Archipelago Co. v. R.* (1853), 2 E. & B. 856. *Mentd. G. E. Ry. v. Goldsmid* (1884), 9 App. Cas. 927.

436. ———.]—*R. v. AIRES*, No. 430, *ante*.

437. ——— For advowson.]—*BREWSTER v. WELD*, No. 431, *ante*.

438. ——— By charter.]—A charter of incorporation was granted by the Crown to certain persons to form a co. It directed that the corp. should not begin business until it should have been certified to the Board of Trade, by three directors, that £50,000 had been paid up. Then followed a proviso to the effect that if the corp. should not comply with any directions & conditions in the letters patent contained, it should be lawful for the Crown to revoke & make void the charter. The co. commenced business without having

£50,000 of their capital paid, but three directors of the co. had knowingly sent in a certificate to the Board of Trade, falsely stating that it had been paid up:—*Held*: (1) the sending the certificate & commencing business without the prescribed capital rendered the charter liable to forfeiture; (2) the proviso did not limit the power of repealing the charter by *sci. fa.*, but was intended, though possibly without effect, to give the Crown an additional power of revocation, & a party aggrieved might, on the fiat of the A.-G., proceed by *sci. fa.* to repeal the charter without having previously obtained a revocation of it by the Crown under the Great Seal or sign manual.—*EASTERN ARCHIPELAGO CO. v. R.* (1853), 2 E. & B. 856; 23 L. J. Q. B. 82; 22 L. T. O. S. 198; 18 Jur. 481; 2 W. R. 77; 2 C. L. R. 145; 118 E. R. 988, Ex. Ch.; *affg. S. C. sub nom. R. v. EASTERN ARCHIPELAGO CO.*, 1 E. & B. 310; *subsequent proceedings, R. v. EASTERN ARCHIPELAGO CO.* (1854), 4 De G. M. & G. 199, L. C.

Annotations.—*As to* (2) *Refd. R. v. Hughes* (1866), L. R. 1 P. C. 81; *Riche v. Ashbury Railway Carriage Co.* (1874), L. R. 9 Exch. 224; *British South Africa Co. v. De Beers Consolidated Mines*, [1910] 1 Ch. 354. *Generally, Mentd. Jackson v. Beaumont* (1855), 19 J. P. 532; *Rendall v. Crystal Palace Co.* (1858), 22 J. P. 321; A.-G. of Duchy of Lancaster v. Devonshire (1884), 14 Q. B. D. 195; *Simpson v. A.-G.*, [1904] A. C. 476.

439. ———.]—*R. v. HUGHES*, No. 427, *ante*.

440. ——— Abuse of franchise.]—*PETER v. KENDAL*, No. 1837, *post*.

441. ——— Repeal of certificate of incorporation—Of limited company.]—*Semble*: a writ of *sci. fa.* will go to repeal the certificate of incorporation of a limited co.—*BRODERIP v. SALOMON*, [1895] 2 Ch. 323; 64 L. J. Ch. 689; 72 L. T. 755; 43 W. R. 612; 11 T. L. R. 439; 39 Sol. Jo. 522; 2 Mans. 449; 12 R. 395, C. A.; *reversd. on other grounds sub nom. SALOMON v. SALOMON & CO., SALOMON & CO. v. SALOMON*, [1897] A. C. 22, H. L.

Annotations.—*Mentd. Seligman v. Prince*, [1895] 2 Ch. 617; *Munkittrick v. Perryman & Hands* (1896), 74 L. T. 149; *Hadley v. Hadley* (1897), 77 L. T. 131; *Re London Health Electrical Institute* (1897), 76 L. T. 98; *Re Wragg*, [1897] 1 Ch. 796; *Re Olympia*, [1898] 2 Ch. 153; *St. Louis Breweries v. Apthorpe* (1898), 47 W. R. 334; *Apthorpe v. Schoenhofen Brewing Co.* (1899), 80 L. T. 395; *Re Hirth, Ex p. Trustee*, [1899] 1 Q. B. 612; *Lagunas Nitrate Co. v. Lagunas Syndicate*, [1899] 2 Ch. 392; *Re Raphael, Ex p. Salomon*, [1899] 1 Ch. 853; *Gramophone & Typewriter v. Stanley*, [1906] 2 K. B. 856; A.-G. for Canada v. Standard Trust Co. of New York, [1911] A. C. 498; *Yeatman v. Homberger* (1912), 107 L. T. 43; *Booth v. Hellwell*, [1914] 3 K. B. 252; *The Tommi, The Rother-sand* (1914), 112 L. T. 257; *R. v. Bloomsbury Income Tax Comrs.*, [1915] 3 K. B. 768; *R. v. Grubb*, [1915] 2 K. B. 683; *Daimler Co. v. Continental Tyre & Rubber Co. (Great Britain)*, [1916] 2 A. C. 307; *Blair v. Haycock Cadle Co.* (1917), 34 T. L. R. 39; *Re Express Engineering Works*, [1920] 1 Ch. 466; *I. R. Comrs. v. Sanson*, [1921] 2 K. B. 492; *Radclyffe v. I. R. Comrs.* (1921), 90 L. J. K. B. 568; *Rainham Chemical Works v. Belvedere Fish Guano Co.*, [1921] 2 A. C. 465.

See, further, COMPANIES.

Revocation of letters patent for inventions.]—*See PATENTS & INVENTIONS.*

To revoke charter of incorporation of trading company.]—*See CORPORATIONS*, Vol. XIII., p. 435, No. 1578.

442. ——— To impeach grant of charter of incorporation.]—There having been a *de facto* grant of a charter of incorporation to a town within a county, & a *de facto* grant of a separate ct. of quarter sessions to it, in pursuance of Municipal Corp. (General) Act, 1837 (c. 78), the ct. quashed a county-rate which included that town, & refused

434 i. For what purposes available—Repeal of Crown grants—By letters patent.]—*R. v. REDHEAD COAL MINING CO.* (1886), 7 N. S. W. L. R. 279; 8 N. S. W. W. N. 59.—*AUS.*

434 ii. ———.]—*FONSECA v. A.-G.* (1880), 17 S. C. R. 612.—*CAN.*
434 iii. ———.]—*R. v. MONTMINTY* (1899), 29 S. C. R. 484.—*CAN.*

434 iv. ———.]—*BRIGHAM v. R. C. R.*, [1900] A. C. 414; 30 S. C. R. 620; 20 C. L. T. 423.—*CAN.*

434 v. ———.]—*DODSON v. WHITE* (1909), 6 E. L. R. 144.—*CAN.*

to entertain objections to the validity of the grant of quarter sessions, on the ground that the grant of the Crown ought in such a case to be directly impeached by *sci. fa.*—*R. v. BOUCHER* (1842), 3 Q. B. 641; 2 Gal. & Dav. 737; 6 Jur. 851; 114 E. R. 653; *sub nom. R. v. BENEKER & ELLIS* (BIRMINGHAM CHURCHWARDEN & OVERSEER), 6 J. P. 657.

Annotations:—*Mentd.* *R. v. Aberavon Corpn.* (1864), 13 W. R. 90; *Graham v. Berry* (1865), 3 Moo. P. C. C. N. S. 207; *R. v. Monck* (1875), 45 L. J. M. C. 50.

— *To dissolve corporation.*—*See CORPORATIONS*, Vol. XIII., p. 436, No. 1589.

443. Does not abate on demise of Crown.]—*R. v. AILES*, No. 430, *ante*.

444. Change of venue.]—In a *sci. fa.* to repeal a patent the venue cannot be changed from Middlesex to any other county.—*R. v. HAINE* (1789), 2 Cox, Eq. Cas. 235; 30 E. R. 109, L. C.

445. Stay of proceedings—Discretionary power of Attorney-General.]—*R. v. PROSSER*, No. 429, *ante*.

446. — After judgment obtained for annulment of letters patent—Jurisdiction of Lord Chancellor.]—A judgment having been obtained on *sci. fa.* that letters patent be annulled, & the enrolment cancelled, the office of the Lord Chancellor in cancelling the enrolment is ministerial only, & he has no jurisdiction to stay the execution of the judgment, or to suspend the cancellation of

the enrolment.—*R. v. EASTERN ARCHIPELAGO CO.* (1854), 4 De G. M. & G. 199; 2 Eq. Rep. 513; 23 L. T. O. S. 62; 2 W. R. 387; 43 E. R. 483, L. C.

447. New trial—When granted.]—*R. v. BEWDLEY CORPN.* (1712), 1 P. Wms. 207; 24 E. R. 357.

Annotations:—*Mentd.* *R. v. Hare & Mann* (1719), 1 Stra. 146; *R. v. Pritchard* (1733), 7 Mod. Rep. 232; *Merrick v. Osselstone Hundred* (1737), Andr. 115; *Smith d. Dormer v. Parkhurst* (1739), 2 Stra. 1105; *R. v. Harman* (1740), 7 Mod. Rep. 402; *Richards v. Symes* (1742), 2 Atk. 319; *A.-G. v. Allgood* (1743), Park. 1; *Burford Corpn. v. Lenthall* (1743), 2 Atk. 551; *Bright v. Eynon* (1757), 2 Keny. 53; *Money v. Leach* (1765), 1 Wm. Bl. 555; *Wilkes v. R.* (1768), Wilk. 322.

448. Costs—General rule.]—*R. v. BEWDLEY CORPN.* (1712), 1 P. Wms. 207; 24 E. R. 357.

Annotations:—*Mentd.* *R. v. Hare & Mann* (1719), 1 Stra. 146; *R. v. Pritchard* (1733), 7 Mod. Rep. 232; *Merrick v. Osselstone Hundred* (1737), Andr. 115; *Smith d. Dormer v. Parkhurst* (1739), 2 Stra. 1105; *R. v. Harman* (1740), 7 Mod. Rep. 402; *Richards v. Symes* (1742), 2 Atk. 319; *A.-G. v. Allgood* (1743), Park. 1; *Burford Corpn. v. Lenthall* (1743), 2 Atk. 551; *Bright v. Eynon* (1757), 2 Keny. 53; *Money v. Leach* (1765), 1 Wm. Bl. 555; *Wilkes v. R.* (1768), Wilk. 322.

449. — — —.]—No costs are either paid or received where the Crown is the prosecutor unless in some particular cases by the special provision of the legislature.—*R. v. MILES* (1797), 7 Term Rep. 367; 101 E. R. 1024.

Annotations:—*Apld.* *R. v. Bingham* (1831), 1 Cr. & J. 379. *Mentd.* *R. v. Canterbury Archbp.* [1902] 2 K. B. 503.

— Right of the Crown to or liability for.]—*See CONSTITUTIONAL LAW*, Vol. XI., pp. 530 *et seq.*

Part IV.—Inquisitions of Escheat.

Copyholds—Escheat of.]—*See COPYHOLDS*, Vol. XIII., pp. 150-152, Nos. 1950-1973.

— Seizure of on outlawry.]—*See COPYHOLDS*, Vol. XIII., p. 55, No. 650.

On dissolution of corporation—Whether lands revert to original donor.]—*See CORPORATIONS*, Vol. XIII., pp. 357, 434, 436, 437, Nos. 935, 1563, 1599, 1600, 1602.

450. Jurisdiction of court—To give leave to traverse or quash inquisition—Where evidence sufficient.]—The ct. has jurisdiction where there is sufficient evidence, not merely to give leave to traverse, but wholly to quash the inquisition.—*Re PARRY, Ex p. BEAUFORT (DUKE)* (1866), L. R. 2 Eq. 95; 35 L. J. Ch. 651; 14 L. T. 617; 12 Jur. N. S. 699.

Annotation:—*Reid. Hill v. Clifford, Clifford v. Timms, Clifford v. Phillips*, [1907] 2 Ch. 236.

451. Traverse of inquisition—Right of subject to—Extent of right.]—The right of the subject to traverse an inquisition, extends to every case in which property is found in the Crown, & is not confined to cases where the Crown claims property by reason of the incidents of tenure. But when the application for permission to traverse is made to this ct. it will not be authorised unless the petitioner makes out a *prima facie* title against the Crown.

The Crown may apply to quash an inquisition but the subject cannot (LEACH, V.-C.).—*Ex p. GWYDIR (LORD)* (1819), 4 Madd. 281; 56 E. R. 709.

452. — Who may traverse—Not mere trustee.]

—An application for leave to traverse an inquisition was refused, no evidence being produced, except the oath of appct., to invalidate the inquisition.

Semble: a mere trustee is not allowed to traverse.—*Re SADLER* (1816), 1 Madd. 581; 56 E. R. 213.

453. — Traversor considered defendant.]—The traversor of an inquisition for the King is to be considered as a deft.—*R. v. ROBERTS* (1741), 2 Stra. 1208; 93 E. R. 1131.

454. — Necessity to show title.]—An inquisition found that F. had forfeited his office of Warden of the Fleet, upon which it was seized into the Queen's hands. M. brought a *monstrans de droit* in Chancery on the inquisition & set forth a title, & traversed F.'s being seised. To this the A.-G. demurred. It appeared that the title which M. had set forth was a bad one, but he still insisted that F. had not forfeited the office, & therefore that the Queen had no title:—*Held*: if pltf. fails in his title he cannot take advantage of want of title in the Crown, or of a stranger's title.—*R. v. MASON* (1702), 7 Mod. Rep. 32; 2 Salk. 447; 87 E. R. 1077.

455. — — —.]—*Ex p. GWYDIR (LORD)*, No. 451, *ante*.

456. — Sufficiency of evidence.]—*Ex p. WEBSTER* (1802), 6 Ves. 809; 31 E. R. 1320.

Annotation:—*Consd.* *Re Sadler* (1816), 1 Madd. 581.

457. — — —.]—*Re SADLER*, No. 452, *ante*.

458. Quashing inquisition—Not on application

p. Costs—Enforcement by *feri facias*.]
—*R. v. CORK CORPN.* (1880), 6 L. R. Ir. 463.—IR.

PART IV.

q. Notice of escheat proceedings—*Failure of person notified to intervene—Whether estopped from attacking proceedings.*—Where proceedings are taken under R. S. 1900, s. 175, to escheat

lands, the fact that the subject of the escheat proceedings, has been trespassed upon by a person not having his place of abode on the land sought to be escheated, does not entitle him to personal service; all that is required is that statutory notice shall have been duly posted, & where this has been done & the person trespassing has failed to intervene within the pre-

scribed period he is estopped from afterwards attacking the proceedings in escheat, by which the lands are reverted in the Crown.—*McFETRIDGE v. McCABE* (1909), 43 N. S. R. 293.—CAN

r. Manner in which taken & executed
—33 Car. 2, c. 22.—*MASON v. A.-G. FOR JAMAICA* (1843), 4 Moo. P. C. C. 228; 13 E. R. 289.—JAMAICA.

of subject.]—*Ex p.* GWYDIR (LORD), No. 451, *ante*.

459. *Mellus inquirendum*—Ordered where inquisition defective.]—Where an inquisition is defective & uncertain, that cannot be supplied by *melius inquirendum*; but where it finds some points & not others, & that which is found is well found, there may be a *melius inquirendum* (*per cur.*).—LAYTON *v.* MANLOVE (1690), 2 Salk. 469;

91 E. R. 403; *sub nom.* R. *v.* MANLOVE, 3 Lev. 288; Holt, K. B. 504; *sub nom.* R. *v.* WARDEN OF THE FLEET, 3 Mod. Rep. 335.

Annotations.—*Conad. Ex p.* Duplessis (1754), 2 Ves. Sen. 538. *Mentd.* Huggins *v.* Bambridge (1740), Willes. 241; R. *v.* Tilley (1795), 2 Leach, 662.

460. ———. *Effect of.*—ANON. (1570), 3 Dyer, 292 a, pl. 71; 73 E. R. 656.

461. ———. *Finality of.*—STOUGHTER'S CASE, No. 270, *ante*.

Part V.—Habeas Corpus.

SECT. 1.—AD SUBJICIENDUM.

SUB-SECT. 1.—NATURE OF THE WRIT.

462. *Not an original writ.*—*Habeas corpus* is no original writ. And if it be in the nature of a judicial writ, there must be a cause for it (VAUGHAN, C.J.).—ANON. (1671), Cart. 221; 124 E. R. 927.

463. *Writ of right*—In nature of a writ of error.]—BUSHELL'S CASE, No. 664, *post*.

464. ———. *The writ of habeas corpus at common law, although a writ of right, is not grantable of course, but only on motion in term time, stating a probable cause for the application, & verified by affidavit.*—HOBHOUSE'S CASE (1820), 3 B. & Ald. 420; 1 State Tr. N. S. App. 1346; 106 E. R. 716; *sub nom.* R. *v.* HOBHOUSE, 2 Chit. 207.

Annotations.—*Refd. Ex p.* Beeching (1825), 6 Dow. & Ry. K. B. 209; R. *v.* Middlesex (1840), 3 State Tr. N. S. 1239; Stockdale *v.* Hansard (1840), 4 Jur. 70; *Ex p.* Aston (1844), 8 J. P. 663; Carus Wilson's Case (1845), 7 Q. B. 984; Cobbett *v.* Slowman (1850), 4 Exch. 747; Bradlaugh *v.* Erskine (1883), 31 W. R. 365. *Mentd.* R. *v.* Evans (1840), 8 Dow. 451; Gosset *v.* Howard (1847), 10 Q. B. 411; Cobbett *v.* Truro (1853), 20 L. T. O. S. 258.

465. ———. *At common law.*—*Ex p.* BESSET, No. 474, *post*.

466. *Remedial writ—Prerogative writ.*—The writ is a *habeas corpus* at common law, for it is not signed *per statum*; it is called a prerogative writ for the King, or a remedial writ (DE GREY, L.C.J.).—CROSBY'S (BRASS) CASE (1771), 3 Wils. 188; 2 Wm. Bl. 754; 19 State Tr. 1137; 95 E. R. 1005.

Annotations.—*Mentd.* Wood's Case (1771), 2 Wm. Bl. 745; R. *v.* Flower (1799), 8 Term Rep. 314; Burdett *v.* Abbot (1812), 4 Taunt. 401; Middlesex Sheriff's Case (1840), 11 Ad. & El. 273; Stockdale *v.* Hansard (1840), 3 State Tr. N. S. 723; Howard *v.* Gosset, Gosset *v.* Howard (1847), 6 State Tr. N. S. 319; Wensleydale Peerage Case (1856), 8 State Tr. N. S. 479.

467. ———. *R. v.* FERRERS (EARL), No. 499, *post*.

468. ———. *CROWLEY'S CASE*, No. 666, *post*.

469. ———. *Not punitive.*—On an application by the parent for a writ of *habeas corpus* in respect of a child, directed to the head of an institution for destitute children in which the child had been placed, it appeared that before the proceedings began he had without authority from the parent handed over the child to another person to be taken to Canada & he alleged that he did not know where he or the child was. The Ct. of Appeal affirmed an order absolute of the Q. B. Div. that

the writ should issue:—*Held*: (1) Such an order was an order within the meaning of Jud. Act, 1873 (c. 66), s. 19, & an appeal lay from it to the Ct. of Appeal; (2) the writ ought to issue on the ground that appct. was entitled to require a return to be made to the writ in order that the facts might be more fully investigated; (3) the time for making the return to the writ would be extended to three months from the date of the judgment.

(4) The remedy of *habeas corpus* is, in my opinion, intended to facilitate the release of persons actually detained in unlawful custody, & was not meant to afford the means of inflicting penalties on those persons by whom they were at some time or other illegally detained (LORD WATSON).—BARNARDO *v.* FORD, GOSSAGE'S CASE, [1892] A. C. 326; 61 L. J. Q. B. 728; 67 L. T. 1; 56 J. P. 629; 41 W. R. 333; 8 T. L. R. 728; 36 Sol. Jo. 681; 1 R. 17, H. L.; *affg.* S. C. *sub nom.* R. *v.* BARNARDO, GOSSAGE'S CASE (1890), 24 Q. B. D. 283, C. A.

Annotations.—*Generally, Mentd.* Gordon *v.* Gordon, [1904] P. 163; R. *v.* Pinckney, [1904] 2 K. B. 84; R. *v.* Crews (1910), 102 L. T. 760.

470. ———. *The object of the writ is not to punish previous illegality, but to release from previous illegal detention* (SCRUTTON, L.J.).—R. *v.* HOME SECRETARY, *Ex p.* O'BRIEN (1923), 39 T. L. R. 487, C. A.; *reusg.* S. C. *sub nom.* *Ex p.* O'BRIEN, 39 T. L. R. 413, D. C.; *subsequent proceedings, sub nom.* HOME SECRETARY *v.* O'BRIEN, *Times*, May 15, H. L.

471. *Issued on cause shown—Not as of course.*—ANON., No. 462, *ante*.

472. ———. *HOBHOUSE'S CASE*, No. 464, *ante*.

473. ———. *Re* NEWTON, No. 520, *post*.

474. *Issues at common law—May be claimed by foreigner—Offence not triable in England.*—The writ of *habeas corpus* issues at common law. It lies, therefore, though the person who claims it is a foreigner, & is charged with a crime, & though that crime be not triable in this country.

This is an application for a *habeas corpus* at common law. The right to make such an application was not first created by Habeas Corpus Acts, 1679 (c. 2) & 1803 (c. 140). It is a right as old as the law, & was expressly declared by Bill of Rights, 1688 (c. 2), to be so (LORD DENMAN, C.J.).—*Ex p.* BESSET (1844), 6 Q. B. 481; 1 New Sess. Cas. 337; 14 L. J. M. C. 17; 4 L. T. O. S. 93; 8 J. P. 743; 9 Jur. 66; 115 E. R. 180.

t. Issues at common law—Where person detained on criminal charge—Habeas Corpus Act, 1679, applies.—*Re* SHAUGHNESSY (1851), 21 N. B. R. 182.—CAN.

PART V. SECT. 1, SUB-SECT. 1.

463. *Writ of right.*—A *habeas corpus* is a writ of right.—R. *v.* HEATH (1744), 18 State Tr. 1.—IR.

s. ———. *Prerogative writ.*—HUNTER

& CO. *v.* HERNAMAN (1823), 1 Ndd. L. R. 285.—NFLD.

470. *Issued on cause shown—Not as of course.*—*Re* MCMURRER (1907), 2 E. L. R. 437.—CAN.

SUB-SECT. 2.—JURISDICTION.

A. What Courts may issue Writ.

See Judicature Act, 1873 (c. 66), s. 16.

475. All superior courts.]—BUSHELL'S CASE, No. 664, *post*.

476. Court of Chancery.]—(1) The Ct. of Ch. in England has by its common law jurisdiction authority as general as the common law cts. have to issue a writ of *habeas corpus*.

(2) Such writ since the passing of Ct. of Ch. Act, 1842 (c. 103), & Ord. 4 in Ch. of 1842 made in pursuance thereof, is properly sealed in the office of the clerk of records & writs. An objection to a writ so sealed that it ought to be sealed with the Great Seal of England was overruled.

(3) A writ of *habeas corpus ad subjiciendum* is a common law prerogative writ, which runs into the island of Jersey.—*Re BELSON* (1850), 7 Moo. P. C. C. 114; 7 State Tr. N. S. 1132; 14 Jur. 631; 13 E. R. 823, P. C.

See, also, No. 666, *post*.

B. To What Places the Writ runs.

See Habeas Corpus Acts, 1679 (c. 2), 1816 (c. 100), 1862 (c. 20), s. 1.

477. Cinque Ports.—At common law.]—BOURN'S CASE (1619), Cro. Jac. 543; Palm. 54, 96; 79 E. R. 465; *sub nom.* BARNES' CASE, 2 Roll. Rep. 157. Annotations:—*Mentd.* R. v. Broom (1697), 12 Mod. Rep. 134; R. v. Morgan (1836), 7 C. & P. 642; Canadian Prisoners' Case (1839), 3 State Tr. N. S. 963.

478. S. P. ANON. (1669), 1 Sid. 431; 82 E. R. 1200.

479. S. P. ALDER v. PUISY (1671), 1 Freem. K. B. 12; 89 E. R. 10.

480. County Palatine—Durham.]—JOBSON'S CASE (1626), Lat. 160; 82 E. R. 325.

481. ———.]—R. v. PELL & OFFLY (1674), 3 Keb. 279; 84 E. R. 720.

482. ———.]—Chester.]—ANON. (1705), 1 Salk. 354; 91 E. R. 309.

483. Channel Islands—Jersey.]—R. v. OVERTON (1668), 1 Sid. 386; 82 E. R. 1173.

484. ———.]—R. v. SALMON (1669), 2 Keb. 450; 84 E. R. 282.

485. ———.]—CARUS WILSON'S CASE, No. 650, *post*.

486. ———.]—*Re BELSON*, No. 476, *ante*.

487. Ireland.]—ANON. (1681), 1 Vent. 357; 86 E. R. 230.

488. Scotland.]—R. v. COWLE (1759), 2 Burr. 834; 2 Keny. 519; 97 E. R. 587.

Annotations:—*Consd.* *Re Crawford* (1849), 13 Q. B. 613. *Expld.* *Ex p. Anderson* (1861), 3 E. & R. 487. *Refd.* *Berwick-upon-Tweed Corpn. v. Shanks* (1826), 3 Bing. 459; *Ex p. Browne* (1864), 10 L. T. 458. *Mentd.* *Tooth v. Bagwell* (1826), 3 Bing. 373.

489. Berwick-upon-Tweed.]—R. v. COWLE (1759), 2 Burr. 834; 2 Keny. 519; 97 E. R. 587.

Annotations:—*Consd.* *Re Crawford* (1849), 13 Q. B. 613. *Expld.* *Ex p. Anderson* (1861), 3 E. & R. 487. *Refd.* *Berwick-upon-Tweed Corpn. v. Shanks* (1826), 3 Bing.

459; *Ex p. Browne* (1864), 10 L. T. 458. *Mentd.* *Tooth v. Bagwell* (1826), 3 Bing. 373.

490. Isle of Man.—At common law.]—*Semble*: a writ of *habeas corpus ad subjiciendum* runs to the Isle of Man, at any rate since Isle of Man Purchase Act, 1765 (c. 26), by which the island is vested unalienably in the King & his successors. If it does so run it is on the common law principle, not by Habeas Corpus Act, 1679 (c. 2).—*Re CRAWFORD* (1849), 13 Q. B. 613; 7 State Tr. N. S. 961; 18 L. J. Q. B. 225; 13 L. T. O. S. 185; 13 J. P. 634; 13 Jur. 955; 116 E. R. 1397.

Annotations:—*Consd.* *Martin v. Mackonochie* (1879), 4 Q. B. D. 697. *Refd.* *Ex p. Anderson* (1861), 3 L. T. 622; *Ex p. Brown* (1864), 5 B. & S. 280.

491. ———.]—*Ex p. BROWN* (1864), 5 B. & S. 280; 4 New Rep. 163; 33 L. J. Q. B. 193; 10 L. T. 458; 28 J. P. 566; 10 Jur. N. S. 945; 12 W. R. 821; 122 E. R. 835.

492. All parts of dominions of Crown—Canada.]—*Ex p. ANDERSON* (1861), 3 E. & R. 487; 30 L. J. Q. B. 129; 3 L. T. 622; 25 J. P. 116; 7 Jur. N. S. 122; 9 W. R. 255; 121 E. R. 525.

Annotations:—*Consd.* *Re Mansergh* (1861), 1 B. & S. 400; *R. v. Crewe*, *Ex p. Sekgome*, [1910] 2 K. B. 576. *Refd.* *Ex p. Brown* (1864) 5 B. & S. 280.

See, now, Habeas Corpus Act, 1862 (c. 20), s. 1.

493. Protectorate.—Not "foreign dominion of the Crown"—Within Habeas Corpus Act, 1862 (c. 20), s. 1.]—The chief of a tribe in the Protectorate of Bechuanaland was detained in custody within the Protectorate by virtue of a proclamation made by the High Comr., under the powers conferred by an Ord. in Council, on the ground that the detention of S. was necessary for the preservation of peace within the Protectorate. On an application by S. for a writ of *habeas corpus* to the Secretary of State for the Colonies:—*Held*: (1) the Protectorate was a foreign country in which His Majesty had jurisdiction within Foreign Jurisdiction Act, 1890 (c. 37), & the detention of S. was lawful; (2) the Protectorate was not a "foreign dominion of the Crown" within the above Act.

Semble: a writ of *habeas corpus* can be properly addressed to the person who has control of prisoner, & that he can order the gaoler to release prisoner. The writ should therefore have been addressed to the High Comr., & not to the Secretary of State, who had no control over S.'s custody.—*R. v. CREWE (EARL)*, *Ex p. SEKGOME*, [1910] 2 K. B. 576; 79 L. J. K. B. 871; 102 L. T. 760; 26 T. L. R. 439, C. A.

494. Foreign country—Outside jurisdiction of court.]—*Ex p. WYATT* (1837), 5 Dowl. 389; Will. Woll. & Dav. 76; *sub nom.* *R. v. ROCHFORD & WYATT*, 1 Jur. 84.

Annotation:—*Refd.* *R. v. Pinckney*, [1904] 2 K. B. 84.

495. ———.]—(1) On appeal from a decision of a Div. Ct. affirming an order made by a judge in chambers, on the application of a husband, for the issue of a writ of *habeas corpus* requiring his wife to bring up the body of his child:—*Held*: there was no power in the ct. or

PART V. SECT. 1, SUB-SECT. 2.—A.

u. Supreme Court.]—The Supreme Ct. has authority to issue writs of *habeas corpus*.—*HUNTER & CO. v. HERNAMAN* (1823), 1 Nfld. L. R. 285.—NFLD.

a. ———.]—Exclusive right to issue.]—*Ex p. STRATHER* (1886), 25 N. B. R. 374.—CAN.

b. ———.]—Power of court limited.]—*Ex p. MACDONALD* (1896), 27 S. C. R. 683.—CAN.

c. ———.]—R. v. CLEMENTS (1903), 34 N. S. R. 443.—CAN.

d. Court of Appeal.—No primary jurisdiction to issue.]—*R. v. RAHMAT*

ALI (1910), 15 B. C. R. 65; 14 W. L. R. 169.—CAN.

e. ———.]—The ct. of appeal has no primary jurisdiction to grant a rule for issue of a writ of *habeas corpus*.—*Ex p. BOUVY* (No. 3) (1900), 18 N. Z. L. R. 608.—N.Z.

f. ———.]—Judge of such court has power as *ex officio* judge of King's Bench.]—*Re BECK*, [1917] 1 W. W. R. 657; 27 Man. L. R. 288.—CAN.

g. County court.]—The county ct. cannot issue a writ of *habeas corpus*.—*Re HARRIS* (1894), 26 N. S. R. 508.—CAN.

h. ———.]—Even if judge acting as master of Supreme Court.]—*R. v.*

WOODWORTH (1912), 12 E. L. R. 70.—CAN.

k. ———.]—Unless applicant confined within county.]—*R. v. WILSON*, *Ex p. IRVING* (1901), 35 N. B. R. 461.—CAN.

476 i. Court of Chancery.]—The issue of writs of *habeas corpus* is not confined to cts. of law, but is within the jurisdiction of cts. of equity.—*R. v. WATERS*, [1912] V. L. R. 372.—AUS.

PART V. SECT. 1, SUB-SECT. 2.—B.

l. Not to places outside jurisdiction of court.]—*R. v. RIEL* (No. 1) (1885), 1 Terr. L. R. 20; 2 Man. L. R. 302.—CAN.

Sect. 1.—Ad subjiciendum: Sub-sect. 2, B. & C.; sub-sect. 3, A. & B. (a).]

a judge, to order the issue of a writ of *habeas corpus* directed to a person who at the date of the order was out of the jurisdiction.

(2) I never heard of a case in which the writ was allowed to lie in the office to await an opportunity of serving it, & I have no doubt as to the necessity of the writ being served at once (MATHEW, L.J.).—*R. v. PINCKNEY*, [1904] 2 K. B. 84; 73 L. J. K. B. 475; 90 L. T. 468; 68 J. P. 361; 52 W. R. 338; 20 T. L. R. 303; 48 Sol. Jo. 328, C. A.

C. Against Whom the Writ may issue.

496. The Crown.]—DARNEL'S CASE, No. 693, *post*.

497. —.]—A warrant of commitment under the Sign Manual is bad, & the Ct. of K. B. will discharge the party on *habeas corpus*.—*R. v. BROWNE, CORBET, ETC.* (1686), 2 Show. 484; 89 E. R. 1055.

498. The Executive.]—Semble: if it appears to the ct. that a misuse of the power conferred upon the Executive is imminent the ct. can upon an application for a writ of *habeas corpus* deal with the matter, even though, in the form in which the application is made, the point is not technically before the ct. & the Executive alleges that appt. is in legal custody.—*R. v. BRITTON PRISON (GOVERNOR)*, *Ex p. SARNO*, [1916] 2 K. B. 742; 86 L. J. K. B. 62; 115 L. T. 608; 80 J. P. 389; 32 T. L. R. 717; 14 L. G. R. 1000, D. O.

*Annotations:—**Reid. R. v. Chiswick Police Station Superintendent, Ex p. Sacksteder*, [1918] 1 K. B. 578; *R. v. Britton Prison, Ex p. Bloom* (1920), 90 L. J. K. B. 574. *Mentd. Brightman v. Tate* (1919), 35 T. L. R. 209.

499. Peers.]—(1) Peers must yield obedience to writs of *habeas corpus*.

(2) An attachment will issue against a peer to enforce obedience to the writ.

(3) This is a *habeas corpus* at common law which is a prerogative writ for the liberty of the subject (LORD MANSFIELD, C.J.).—*R. v. FERRERS (EARL)* (1758), 1 Burr. 631; 97 E. R. 483.

500. Not foreign legation.]—*Re SUN YAT* (1896), Short & Mellor's Crown Office Practice, 2nd ed. 318.

SUB-SECT. 3.—PURPOSES OF THE WRIT.

A. In General.

501. Safeguard against unlawful detention.]—*R. v. CLARKSON*, No. 782, *post*.

502. —.]—The intent of an *habeas corpus* is to provide against a restraint of liberty.—*R. v. SMITH* (1736), *Ridg. temp. H.* 149; *Cunn.* 72; 7 Mod. Rep. 234; 2 Stra. 982; 27 E. R. 787.

*Annotations:—**Mentd. R. v. Delaval* (1763), 1 Wm. Bl. 410; *Re Lloyd* (1841), 4 Scott, N. R. 200; *R. v. Clarke* (1857), 7 E. & B. 186.

503. —.]—*R. v. FERRERS (EARL)*, No. 499, *ante*.

504. —.]—The ct. will not, at the prayer of the master grant a *habeas corpus* to bring up an apprentice impressed, he being willing to enter

into the King's service.—*Ex p. LANDSDOWN* (1804), 5 East, 38; 102 E. R. 983.

505. —.]—WATSON'S CASE, No. 585, *post*.

506. —.]—Where a wife is, by her own desire, living apart from her husband, & is under no restraint, the ct. will not grant a *habeas corpus* on the application of the husband, for the purpose of restoring her to his custody.—*R. v. LEGGATT* (1852), 18 Q. B. 781; 19 L. T. O. S. 201; 16 J. P. 472; 118 E. R. 295; *sub nom. Ex p. SANDILANDS*, 21 L. J. Q. B. 342; 17 Jur. 317.

*Annotation:—**Reid. R. v. Jackson*, [1891] 1 Q. B. 671.

507. —.]—Upon an application for a *habeas corpus*, the question for the consideration of the ct. is whether the person brought up on *habeas corpus* is under illegal custody without that person's consent.—*Re AGAR-ELLIS, AGAR-ELLIS v. LASCELLES* (1883), 24 Ch. D. 817; 53 L. J. Ch. 10; 50 L. T. 161; 32 W. R. 1, C. A.

*Annotations:—**Reid. R. v. Gyngall*, [1893] 2 Q. B. 232. *Mentd. Re Scanlan* (1888), 40 Ch. D. 200; *Re McGrath*, [1893] 1 Ch. 113; *Thomasset v. Thomasset*, [1894] P. 295; *Re Newton*, [1896] 1 Ch. 740; *Re Mathieson* (1918), 87 L. J. Ch. 445.

508. —.]—(1) Where a person has been discharged from custody by an order of the High Ct. under a *habeas corpus* the Ct. of Appeal has no jurisdiction to entertain an appeal.

(2) If release was refused a person detained might make a fresh application to every judge or every ct. in turn, & each ct. or judge was bound to consider the question independently, & not to be influenced by the previous decisions refusing discharge (LORD HALSBURY, C.).

(3) The law of this country has been very jealous of any infringement of personal liberty, & a great safeguard against it has been provided by the manner in which the cts. have exercised their jurisdiction to discharge under a writ of *habeas corpus* those detained unlawfully in custody (LORD HERSHELL).—*Cox v. HAKES* (1890), 15 App. Cas. 506; 60 L. J. Q. B. 89; 63 L. T. 392; 54 J. P. 820; 39 W. R. 145; 6 T. L. R. 405; 17 Cox, C. C. 158, H. L.; *revg. S. C. sub nom., Ex p. COX (BELL)* (1887), 20 Q. B. D. 1, C. A.; *restg. S. C. sub nom. Ex p. COX (BELL)*, 19 Q. B. D. 307.

*Annotations:—**As to (1) Distd. Barnardo v. McHugh*, [1891] A. C. 388. *Reid. R. v. Barnardo* (1889), 23 Q. B. D. 305; *R. v. Jackson* (1891), 64 L. T. 679. *As to (3) Reid. Brady v. Gibb* (1921), 37 T. L. R. 975. *Generally, Mentd. Re Standard Manufacturing Co.*, [1891] 1 Ch. 627; *The Tynwald*, [1895] P. 142; *Scaman v. Burley*, [1896] 2 Q. B. 344; *Watney, Combe, Reid v. Berners*, [1914] 3 K. B. 288; *Re Boaler, Re Vexatious Actions Act*, 1896, [1915] 1 K. B. 21; *R. v. Halliday*, [1917] A. C. 260; *Fasbender v. A.-G., Kramer v. A.-G.*, [1922] 2 Ch. 850.

509. —.]—BARNARDO v. FORD, GOSSAGE'S CASE, No. 469, *ante*.

510. Control of inferior courts.]—The object of the control which this ct. has over the ecclesiastical cts. by means of the writ of *habeas corpus* is to keep those cts. within the jurisdiction which the law has assigned to them, & not to correct any error into which they may fall in the exercise of it.—*Re BAINES* (1840), 1 Cr. & Ph. 31; 4 Jur. 1194; 41 E. R. 401, L. C.

*Annotations:—**Mentd. Richards v. Dyke* (1842), 3 Q. B. 256; *Dale's Case, Enraght's Case* (1881), 6 Q. B. D. 376; *Dean v. Green* (1882), 8 P. D. 79; *Ex p. Cox* (1887), 19 Q. B. D. 307.

Nature of the writ, *see* Sect. 1, sub-sect. 1, *ante*.

PART V. SECT. 1, SUB-SECT. 3.—A.

501 i. Safeguard against unlawful detention.]—The object of *habeas corpus* is to see that no person is deprived of his liberty illegally & against his will, & not to determine the respective rights of parties over one another.—*STOFFELLEN v. HULL* (1876), 2 Q. L. R. 255.—CAN.

501 ii. —.]—A writ of *habeas corpus* lies only in cases where persons are imprisoned or deprived of their liberty.—*Re OSMUN* (1918), Q. R. 27 K. B. 282.—CAN.

501 iii. —.]—The rights of personal liberty which persons in Cape Colony enjoy are substantially the same as those which are possessed in Great Britain, & it is the duty of the ct.

to protect personal liberty whenever it is infringed upon.—*Re KOK* (1879), Buch. A. C. 45.—S. AF.

m. Remission of portion of sentence.]—*Habeas Corpus Act* does not apply when a convict desires a portion of his sentence remitted.—*R. v. HUCKLE* (1914), 19 D. L. R. 369.—CAN.

B. To test Validity of Commitment.**(a) In General.**

511. General rule.]—The principle of granting *habeas corpus* is that if we find that a party is rightly in custody we do not interfere (PATTESON, J.).—*Ex p. THOMAS* (1849), 13 J. P. Jo. 762.

512. Mere formal defect in commitment—Whether ground for interference.]—*R. v. BETHEL*, No. 656, *post*.

513. ———.]—Deft. was brought up from Oxford gaol on a *habeas corpus*. It appeared that he had been committed for want of sureties in an action in the Vice-Chancellor's Ct. for injury & damage to the value of £1000, & by warrant the beadles of the university were required to carry him to prison. On motion for his discharge:—*Held*: he would be discharged because (1) the warrant was not directed to any gaoler, but was only generally to carry him to prison; (2) it did not appear that pltf. had made any affidavit of a debt, without which the ct. below could not hold to bail.—*R. v. SMITH* (1732), 2 Stra. 934; 2 Barn. K. B. 133; 93 E. R. 951.

514. ———.]—The Ct. of K. B. will not grant a *habeas corpus* to discharge out of custody a person who has been convicted of libel, at the commission of oyer & terminer, at the Old Bailey, on the ground that when the verdict was returned only one comr. was present instead of two, as required by law. But *qu.*: whether such a circumstance may not be assigned as error.—*R. v. CARLILE* (1831), 4 C. & P. 415; 2 State Tr. N. S. 459; *subsequent proceedings*, 2 B. & Ad. 362, 971. *Annotation*:—*Mentd. R. v. Middlesex JJ.* (1834), 3 Nev. & M. K. B. 110.

515. ———.]—A ct. of equity committed a party, under a writ of rebellion. The commitment, which was regular in other respects, omitted the date of the return to the writ of rebellion; & it was suggested, on motion for *habeas corpus*, that this omission had the effect of concealing the falseness of the return:—*Held*: this was no ground for a *habeas corpus*, but only for an application to the ct. of equity. Where, upon a prisoner being brought up by *habeas corpus ad subjiciendum*, it appears that he is detained for a legitimate cause, the ct. will not inquire whether another cause, on which also he is detained, be legitimate. Where the detention is objected to solely on the ground of an alleged impropriety in the details of a suit in an Equity Ct. which has committed the prisoner, this ct. will not interfere.—*Re COBBETT* (1845), 7 Q. B. 187; 115 E. R. 458.

Annotation:—*Mentd. Gosset v. Howard* (1845), 10 Q. B. 411.

516. Conviction on indictment—Right to remove by certiorari taken away by statute—Commitment not before court.]—*Qu.*: whether the validity of a conviction, where the right to remove it by *certiorari* is taken away by statute, can be questioned on motion for a *habeas corpus*, the commitment not being before the ct.—*Re BOOTHROYD* (1846), 15 M. & W. 1; 2 New Sess. Cas. 250; 15 L. J. M. C. 57; 6 L. T. O. S. 323; 10 J. P. 484; 10 Jur. 117; 153 E. R. 736.

Annotation:—*Mentd. R. v. Shipperbottom* (1847), 16 L. J. M. C. 113.

517. ———.]—A writ of *habeas corpus* is not grantable in general where the party is in execution on a criminal charge, after judgment, on an indictment according to the course of the common law.—*Ex p. LEES* (1858), E. B. & E. 828; 31 L. T. O. S. 247; 5 Jur. N. S. 333; 6 W. R. 660; 120 E. R. 718; *sub nom. R. v. LEES*, 27 L. J. Q. B. 403.

Annotations:—*Apld. R. v. Lewes Prison, Ex p. Doyle*, [1917] 2 K. B. 254. *Mentd. Re Anderson* (1861), 30 L. J. Q. B. 129; *Re Mansergh* (1861), 1 B. & S. 400.

518. ——— Court-martial.]—I concur in the judgment of the L. C. J. on every point, & I only wish to add, in case these proceedings should be regarded as an encouragement to persons who have been convicted of indictable offences to apply for writs of *habeas corpus*, that Lord Campbell, C.J. said in *Ex p. Lees* [No. 517, *ante*], that a writ of *habeas corpus* "is not grantable in general where the party is in execution on a criminal charge, after judgment, on an indictment according to the course of common law." In my judgment that principle applies where a person has been convicted by a duly constituted ct.-martial the proceedings of which have been in due course confirmed by the competent authority (AVORY, J.).—*R. v. LEWES PRISON (GOVERNOR), Ex p. DOYLE*, [1917] 2 K. B. 254; 86 L. J. K. B. 1514; 116 L. T. 407; 81 J. P. 173; 33 T. L. R. 222; 25 Cox, C. C. 635, D. C.

519. Indictment for murder—Delay in prosecution—Habeas Corpus Act, 1679 (c. 2), s. 7.]—Before the spring assizes, 1840, A. was committed to take his trial at those assizes for shooting B. The trial was postponed to the summer assizes, on the ground, that B. was too ill from his wounds to be able to attend to give evidence. Before the summer assizes B. died, & at those assizes a true bill for the murder of B. was found against A., & application was made on the part of the prosecution to postpone the trial to the next spring assizes, on the ground of the illness of a material witness:—*Held*: the application would be granted, & A. was not entitled to his discharge under Habeas Corpus Act, 1679 (c. 2), s. 7.—*R. v. BOWEN* (1840), 9 C. & P. 509.

520. ——— Committal by magistrate—Discharge of jury at trial—Not equivalent to acquittal.]—(1) A prisoner committed by a justice of the peace for murder was indicted at the assizes, pleaded not guilty, & was given in charge to a jury. The jury remained in deliberation all night. Next day, being brought into ct. they stated that they had not agreed, & were not likely to agree, on their verdict. The other business of the assize for the county was over, & the judge's duty called him to the next assize town. He discharged the jury & remanded the prisoner. On motion for a *habeas corpus* at common law:—*Held*: whether the judge was or was not justified in discharging the jury, the discharge was not equivalent to an acquittal, & the prisoner was properly detained in custody under the original commitment.

(2) This is an application for a *habeas corpus* at common law, which is grantable only on reasonable ground being shown & not of course. Before we suffer the writ to go, the custody must be shown to

PART V. SECT. 1, SUB-SECT. 3.—
B. (a).

511i. General rule.]—The duty of the ct. or a judge on a *habeas corpus*, is to determine on the legal sufficiency of the commitment.—*R. v. RENO* (1868), 4 P. R. 281.—CAN.

512i. Formal defect in commitment—Whether ground for interference.]—

R. v. BRINE (1899), 33 N. S. R. 43.—CAN.

512ii. ———.]—Deft. was summarily convicted by a magistrate, & sentenced to imprisonment; the conviction did not show on its face the magistrate's jurisdiction:—*Held*: if any part of the record showed that he had jurisdiction it was sufficient.—*R. v. MALI* (1912), 20 W. L. R. 217.—CAN.

512iii. ——— Description of offence following statute.]—*GREENE v. VALLEE* (1906), Q. R. 14 K. B. 261.—CAN.

512iv. ———.]—A conviction & warrant of commitment are not bad if the description of the offence in the conviction follows the statute.—*R. v. BRADY* (1913), 23 W. L. R. 333; 3 W. W. R. 914.—CAN.

Sect. 1.—Ad subjiendum: Sub-sect. 3, B. (a), (b), (c), (d), (e), (f), (g) & (h), C.]

be illegal (PATTESON, J.)—*Re* NEWTON (1849), 13 Q. B. 716; 7 State Tr. N. S. App. A. 1130; 13 J. P. 666; 13 Jur. 606; 116 E. R. 1437; *sub nom.* R. v. NEWTON, 3 Car. & Kir. 85; 18 L. J. M. C. 201; 13 L. T. O. S. 206; 3 Cox, C. C. 489.

Annotations:—*Generally*, *Mentd.* R. v. Davison (1860), 8 Cox, C. C. 360; R. v. Charlesworth (1861), 1 B. & S. 460; Winsor v. R. (1866), L. R. 1 Q. B. 390.

See, generally, CRIMINAL LAW & PROCEDURE.

Not where effect would be to review decisions of superior courts—Or inferior courts acting within jurisdiction.]—See Sub-sect. 3, C., *post*.

(b) *Defective Warrants.*

521. General rule.]—Where a deft. seeks to be discharged out of custody, on the ground that the warrant of commitment on which he is detained is illegal, he must be brought before the ct. by a writ of *habeas corpus*, although he is too poor to bear the expense as the validity of the warrant will not be discussed in his absence.—*Ex p.* MARTINS (1840), 9 Dowl. 194; Woll. 6; 4 J. P. 720.

Annotation:—*Consd.* *Ex p.* Cross (1857), 2 H. & N. 354.

522. —.]—(1) The ct. will grant a rule calling on a committing magistrate to show cause why a writ of *habeas corpus* should not issue to bring up a prisoner, in order that the validity of the warrant of commitment may be discussed on showing cause.

(2) Where a prisoner has been lodged in ct. under a bad warrant of commitment, even in the nature of a conviction, a good warrant of commitment subsequently delivered to the gaoler, but before a rule for a *habeas corpus* has been obtained, is a good answer to that rule.—*Ex p.* Cross (1857), 2 H. & N. 354; 26 L. J. M. C. 201; 21 J. P. 407; 157 E. R. 147.

Annotation:—*As to* (2) *Refd.* *Re* Terraz & Extradition Acts, 1870 & 1873 (1878), 39 L. T. 502.

523. Where warrant *primâ facie* valid.]—Where deft. had been committed, & the warrant was valid on the face of it, a *habeas corpus* was refused, the proper course being to apply to the county ct. to recall the warrant.—*Ex p.* PAUDY (1850), 1 L. M. & P. 16; *sub nom.* *Ex p.* PURDAY, Rob. L. & W. 503; 19 L. J. M. C. 95; 14 J. P. Jo. 113. **Annotations:—***Refd.* George v. Somers (1855), 25 L. T. O. S. 145. *Mentd.* *Re* Symons (1850), 15 L. T. O. S. 304; Ahley v. Dale (1851), 11 C. B. 378.

524. Warrant under Royal Sign Manual.]—R. v. BROWNE, CORBET, ETC., No. 497, *ante*.

For essentials to validity of warrant, *see* CRIMINAL LAW & PROCEDURE; MAGISTRATES.

Extradition warrants, *see* EXTRADITION & FUGITIVE OFFENDERS.

Commitments by Parliament, *see* PARLIAMENT.

(c) *Illegal Arrests.*

525. When protected by privilege—Attending court.]—If a witness coming to testify in a cause in Middlesex be arrested in London by one knowing the cause he hath no remedy but by *habeas corpus* to examine & deliver him thereby.—VANDEVELDE v. LUELLIN (1661), 1 Keb. 220; 83 E. R. 910. **Annotations:—***Refd.* Cameron v. Lightfoot (1777), 2 Wm. Bl. 1190; Magnay v. Burt (1843), 5 Q. B. 381.

526. —.]—SOLOMON v. UNDERHILL (1808), 1 Camp. 229, N. P.

527. —.]—*Ex p.* TILLOTSON (1816), 1 Stark. 470, N. P.

528. —.]—A barrister who had attended the ct., not professionally, but as a party interested on a motion, was arrested shortly after he had quitted the ct. On motion for his immediate discharge, the ct. doubted whether he could be discharged without being brought into ct. & recommended a writ of *habeas corpus* to be issued, which having been done, & the party brought into ct. he was discharged.—ANON. (1835), 1 Y. & C. Ex. 331; 4 L. J. Ex. Eq. 46; 160 E. R. 134.

529. —.]—ASTBURY v. BELBIN (1850), 3 Car. & Kir. 20, N. P.

530. — Priest in ordinary of chapel royal.]—A "priest in ordinary of Her Majesty's chapels royal" is privileged from arrest on process of the county ct. under 8 & 9 Vict. c. 95, s. 99 for non-attendance on a judgment summons. The proper mode of obtaining his discharge in such case is by *habeas corpus* from one of the superior cts. upon affidavits showing his privilege, or by application to the judge of the county ct.—SWAN v. DAKINS (1855), 16 C. B. 77; 24 L. J. C. P. 131; 25 L. T. O. S. 51; 19 J. P. 358; 1 Jur. N. S. 378; 3 W. R. 369; 3 C. L. R. 602; 139 E. R. 684.

Annotations:—*Consd.* George v. Summers (1855), 24 L. J. Ex. 247; *Re* Wilson (1857), 30 L. T. O. S. 138. *Refd.* George v. Somers, *Ex p.* Somers (1855), 24 L. J. C. P. 185; *Re* Wilkins, *Ex p.* Wilkins (1862), 5 L. T. 647. *Mentd.* Bailey v. Plant, [1901] 1 K. B. 31; R. v. Birmingham County Court Judge (1902), 71 L. J. K. B. 881.

Immunity of the Crown, members of the royal household, & Crown servants from arrest, *see* CONSTITUTIONAL LAW, Vol. XI., pp. 520, 521, Nos. 254-271.

Privilege from arrest generally, *see* SHERIFFS & BAILIFFS.

531. Second arrest for same offence—Habeas Corpus Act, 1679 (c. 2), s. 6.]—Sect. 6 of the above Act applies to a second arrest for the same offence but not to a second arrest for a different offence.

A coolie who had been imprisoned with a view to being surrendered to the Chinese Govt., on the ground of his having feloniously seized a ship at sea & murdered some of the crew, had been brought up on a writ of *habeas corpus* & discharged by the Chief Justice of Hong Kong. Thereupon he was again arrested on a warrant for piracy *jure gentium*. On being brought up again on a writ of *habeas corpus*, he was again discharged on the ground that he had been committed a second time for the same offence, contrary to Habeas Corpus Act, 1679 (c. 2), s. 6:—*Held*: the first order of discharge should be upheld, but the second should be reversed.—A-G. FOR COLONY OF HONG KONG v. KWOK-A-SING (1873), L. R. 5 P. C. 179; 42 L. J. P. C. 64; 29 L. T. 114; 37 J. P. 772; 21 W. R. 825; 12 Cox, C. C. 565, P. C.

Annotations:—*Expld.* Cox v. Hakes (1890), 15 App. Cas. 508. *Consd.* R. v. Brixton Prison, *Ex p.* Stallmann, [1912] 3 K. B. 424. *Mentd.* Stivewright v. Allen, [1906] 2 K. B. 81.

532. —.]—The above Act only applies when the second arrest is substantially for the same cause as the first arrest.—R. v. BRIXTON PRISON (GOVERNOR), *Ex p.* STALLMANN, [1912] 3 K. B. 424; 82 L. J. K. B. 8; 107 L. T. 553; 77 J. P. 5; 28 T. L. R. 572; 23 Cox, C. C. 192, D. C.

(d) *By Parliament.*

See PARLIAMENT.

PART V. SECT. 1, SUB-SECT. 3.—B. (b).

521 i. General rule.]—A warrant of commitment which recites a conviction must show upon the face of the recited

conviction that the offence was one over which the committing magistrate had jurisdiction.—R. v. COLLINS (1888), 5 Man. L. R. 136.—CAN.

521 ii. —.]—If only defects in the

warrant are rolled on to discharge an accused from custody the proper course is to issue a writ of *habeas corpus*.—LEE SUN v. HERBERT (1906), 26 N. Z. L. R. 370.—N.Z.

(e) *By Inferior Courts.*

533. Bankruptcy commissioners—Failure to answer satisfactorily.]—*Qu.*: whether the remedy of a bkpt. against commitment by the comrs. for failure to answer satisfactorily is by writ of *habeas corpus*, or by petition.—*Ex p.* TOMKINSON (1804), 10 Ves. 106; 32 E. R. 784, L. C.

534. ———.]—*Ex p.* NOWLAN (1804), 11 Ves. 511; 32 E. R. 1187, L. C.

Annotations:—Mentd. *Ex p.* Oliver (1813), 2 Ves. & B. 244; *Re Kirby & Thomas, Ex p.* Kirby (1829), Mont. & M. 212.

535. ———.]—*Ex p.* BAGSTER (1828), 2 Man. & Ry. K. B. 467.

536. ———.]—*Ex p.* KNIGHT (1836), 2 M. & W. 106; 6 L. J. Ex. 13; 150 E. R. 689.

537. ———.]—*Ex p.* LEGGE (1853), 22 L. J. Q. B. 345; 21 L. T. O. S. 79; 17 Jur. 415; 1 W. R. 328; 1 C. L. R. 42; 17 J. P. Jo. 278.

Annotation:—Mentd. *Ex p.* Bradbury (1853), 18 Jur. 189.

538. ——— Conduct of examination inadequate.]—If comrs. of bkpt. order bkpt. to be imprisoned under a warrant of commitment, for not answering a question put to him by them satisfactorily, & it does not appear on the face of such warrant, that the answer was altogether unsatisfactory, or that he ought to have been interrogated further, the ct. will order a writ of *habeas corpus* to issue to bring up bkpt. before them.—*Re WILLMENT* (1825), 3 L. J. O. S. C. P. 144.

539. ———.]—*Re LEE, Ex p.* LEE (1834), 2 Mont. & A. 15.

540. Court of Vice-Chancellor of Cambridge.]—CAMBRIDGE UNIVERSITY CASE (1629), Het. 145; 124 R. 410.

541. ———.]—H. was committed to the Spinning House at Cambridge on the warrant of the V.-C. of the university, stating that she had been charged with "walking with a member of the university," which charge had been adjudged true. On an application for a writ of *habeas corpus* affidavits were used proving that the form of words describing the charge had always been used to mean, & in this instance meant, "walking with an undergraduate for an immoral purpose":—*Held*: the words must be construed literally in their natural sense, & as they did not charge H. with any offence within the jurisdiction of the V.-C. the application would be granted.—*Ex p.* HOPKINS (1891), 61 L. J. Q. B. 240; 66 L. T. 53; 56 J. P. 262; 17 Cox, C. U. 444; *sub nom.* *R. v. CAMBRIDGE UNIVERSITY (VICE CHANCELLOR), Re HOPKINS*, 8 T. L. R. 151, D. C.

Annotation:—Refd. Bingley v. Quest (1907), 5 L. G. R. 938.

Ecclesiastical courts.]—*See* ECCLESIASTICAL LAW.

Naval & military courts.]—*See* ROYAL FORCES.

Whether decisions of inferior courts reviewed—By granting writ of habeas corpus.]—*See* Sub-sect. 3, C., *post*.

Mere formal defect in commitment—No ground for interference.]—*See* Nos. 513–515, *ante*, No. 666, *post*.

(f) *Of Aliens and Prisoners of War.*

Aliens.]—*See* ALIENS, Vol. II., p. 125, No. 26.

British subjects of alien origin.]—*See* CONSTITUTIONAL LAW, Vol. XI., p. 552, Nos. 539, 540.

Prisoners of war.]—*See* ALIENS, Vol. II., pp. 143, 157, Nos. 171, 274–276; CONSTITUTIONAL LAW, Vol. XI., p. 552, No. 538.

PART V. SECT. 1, SUB-SECT. 3.—C.

547. Whether decisions of superior Court—Chancery—Proceedings irregular.]—The ct. will not interfere by *habeas corpus* where the imprisonment

is under process out of the Supreme Ct. in Equity, though the proceedings under which such process issued are irregular.—*Ex p.* WRIGHT (1893), 32 N. B. R. 54.—CAN.

n. — *Supreme Court.*—A prisoner

(g) *For Extradition or under Fugitive Offenders Act, 1881.*

See EXTRADITION & FUGITIVE OFFENDERS.

(h) *Other Cases.*

542. Jury committed for acquitting prisoner.]—PENN & MEAD'S CASE (1670), 6 State Tr. 951.

543. Crime committed in Ireland.]—A man may be sent over to Ireland to be tried for a crime there committed notwithstanding the clause in Habeas Corpus Act, 1679 (c. 2).—*R. v. KIMBERLEY* (1729), Fitz-G. 111; 2 Stra. 848; 94 E. R. 677; *sub nom.* ANON., 1 Barn. K. B. 225.

Annotation:—Mentd. Mure v. Kaye (1811), 4 Taunt. 31.

544. Married woman having no separate estate—Imprisoned for non-payment of costs.]—W., a married woman, having entered into a hire & purchase agreement of a piano, & failed to pay an instalment, was sued for delivery of piano, & committed to prison for refusal to deliver it. She had no separate property:—*Held*: a married woman without separate property could not be imprisoned for non-payment of costs, & her discharge would be ordered on motion under a writ of *habeas corpus*.

It has been supposed there was a rule against the allowance of costs on a *habeas corpus*, & judges have differed in opinion about it; but I know of no such rule & the lady should have the costs of obtaining her discharge (SMITH, J.).—*Re WALTER* (1891), 55 J. P. 551; 7 T. L. R. 445, D. C.

545. Wrongful detention to serve remanet of old sentence.]—*R. v. WILLIAMS* (1909), 3 Cr. App. Rep. 2, C. C. A.

C. *Reviewing Decisions of Other Courts.*

546. Not decisions of superior court.]—Deft. was tried on an indictment for perjury, convicted & sentenced, at *nisi prius*. On motion for a writ of *habeas corpus* to discharge him out of custody, on the ground that the judgment recited in the warrant of commitment was not warranted by law:—*Held*: the ct. would not grant a writ of *habeas corpus*, the effect of which would be to review the judgment of one of the superior cts. In such case the remedy was by writ of error.—*Re DUNN* (1847), 5 C. B. 215; 5 Dow. & L. 345; 17 L. J. C. P. 97; 10 L. T. O. S. 187; 136 E. R. 859.

547. ——— Chancery.]—This ct. has no power to discharge upon a *habeas corpus* a prisoner from custody under process of the Ct. of Ch. & cannot entertain any question as to the irregularity of such process.—*Re ANDREWS* (1847), 4 C. B. 226; 136 E. R. 491.

548. ——— Admiralty.]—Where on the return to a writ of *habeas corpus* in respect of a person in execution upon a sentence given against him by the Ct. of Admlty., it does not appear that the Admlty. had not jurisdiction of the cause but only that they had proceeded to a sentence against the rules of their own ct., the Ct. of K. B. will not interfere, for he ought to have appealed.—ANON. (1648), Sty. 129; 82 E. R. 585.

549. ——— Bankruptcy Court.]—The Ct. of Q. B. cannot, on application for granting a writ of *habeas corpus*, inquire into the grounds upon which a certificate of conformity was refused by the Ct. of Bkpcy.—*Re COWGILL* (1851), 16 Q. B.

may obtain a writ of *habeas corpus* on showing that he was sentenced without jurisdiction, even if the sentence was imposed by the Supreme Ct.—*Re SPARROW* (1908), 28 N. Z. L. R. 143.—N.Z.

Sect. 1.—Ad subjiendum: Sub-sect. 3, C., D. (a), (b). (c) & (d), E. & F.; sub-sect. 4, A. (a).]

336; 20 L. J. Q. B. 300; 16 L. T. O. S. 387; 15 Jur. 509; 117 E. R. 907.

Annotations:—*Mentd.* *Re Gibson, Ex p. Gibson* (1853), 21 L. T. O. S. 9; *Re Lawrence, Mortimore & Schrader* (1861), 4 L. T. 184.

550. — Central Criminal Court.]—This ct. has no power to grant a *habeas corpus* to bring up a prisoner who has been convicted at the Central Criminal Ct., on the ground that the offence charged was committed at a place out of the jurisdiction of that ct. The proper course is, to apply to the A.-G. for his *fiat* for the allowance of a writ of error *coram nobis*, the granting or withholding of which is matter for his discretion. The ct. declined to allow the motion for the *habeas corpus* to be made by the father of the prisoner, but required it to be made by counsel.—*Re Newton* (1855), 16 C. B. 97; 24 L. J. C. P. 148; 25 L. T. O. S. 99; 19 J. P. 312; 3 W. R. 419; 3 C. L. R. 1122; 139 E. R. 692.

551. Inferior court—Not on a question of fact.]—Where a person convicted under 7 & 8 Geo. 4, c. 30, of a malicious trespass, admitted the act complained of before the justice, but said that he did it as an act of ownership, the Ct. of Q. B. will not grant a writ of *habeas corpus* upon an affidavit setting forth this fact, for otherwise the ct. would be reviewing the justice's decision upon the facts.—*Re* — (1857), 5 W. R. 607.

552. — When acting within jurisdiction.]—Though the committal of a debt in a county ct. suit on an unsatisfied judgment is in the nature of qualified execution, it is also partly in the nature of punishment. Therefore debt's discharge from the judgment debt in the Insolvent Ct. does not entitle him to discharge from imprisonment under such committal. The application must be made to the county ct. judge, who has jurisdiction to allow or disallow the discharge, & if he disallows it, the superior cts. will not grant a *habeas corpus*.—*George v. Somers* (1855), 10 C. B. 539; 25 L. T. O. S. 115; 19 J. P. 391; 139 E. R. 870; *sub nom. Re George v. Somers, Ex p. Somers*, 24 L. J. C. P. 185; 3 C. L. R. 851; *sub nom. Ex p. Summers*, 3 W. R. 487.

Annotation:—*Refd.* *Copeman v. Rose* (1857), 7 E. & B. 679.

553. —]—Upon a rule for a *habeas corpus*, upon a committal by a police magistrate under Extradition Act, 1870 (c. 52):—*Held*: as this was not a ct. of appeal in such a case it would not question the judgment of the magistrate if the case was within his jurisdiction & there was any evidence to support his decision.—*Ex p. Huguet* (1873), 29 L. T. 41; 12 Cox, C. C. 551.

Annotations:—*Consd.* *R. v. Maurer* (1883), 10 Q. B. D. 513. *Refd.* *Ex p. Castioni* (1890), 7 T. L. R. 50; *Re Bluhm*, [1901] 1 K. B. 764. *Mentd.* *Re Guerin* (1888), 58 L. J. M. C. 42.

554. — On ground that decision against weight of evidence.]—Upon an application for a *habeas corpus* in the case of a fugitive criminal committed by a police magistrate under the

Extradition Act, 1870 (c. 52), the ct. has no power to review the decision of the magistrate on the ground that it was against the weight of evidence laid before him, there being sufficient evidence before him to give him jurisdiction in the matter.—*R. v. Maurer* (1883), 10 Q. B. D. 513; *sub nom. Re Maurer*, 52 L. J. M. C. 104, D. C. **Annotations:—***Refd.* *Ex p. Castioni* (1890), 7 T. L. R. 50; *Re Bluhm*, [1901] 1 K. B. 764.

555. — On ground of omission to give formal evidence—On matter necessary to give jurisdiction.]—A writ of *habeas corpus* ought not to be granted, where there has merely been an omission to give formal evidence of a matter necessary to give jurisdiction to the committing magistrate, although there has been in fact no question as to the existence of such jurisdiction.—*R. v. Brixton Prison (Governor), Ex p. Servini*, [1914] 1 K. B. 77; 83 L. J. K. B. 212; 109 L. T. 986; 78 J. P. 47; 30 T. L. R. 35; 58 Sol. Jo. 68; 23 Cox, C. C. 713, D. C.

556. —]—The decision of an inferior ct. upon a matter the decision of which is entrusted to that ct. cannot be questioned by means of a writ of *habeas corpus*.—*R. v. Morn Hill Camp (Commanding Officer), Ex p. Ferguson*, [1917] 1 K. B. 176; 86 L. J. K. B. 410; 115 L. T. 927; 81 J. P. 73; 33 T. L. R. 47, D. C.

Annotation:—*Mentd.* *Filnt v. A.-G.*, [1918] 1 Ch. 216.

557. — Acting without jurisdiction—Magistrates.]—The return to a *habeas corpus ad subjiendum*, to bring up B., assigned, as the cause of B.'s detention, a warrant by a justice. The warrant did not set forth the evidence, nor state that it was taken in the prisoner's presence, or on oath. Affidavits were used showing the evidence before the justice:—*Held*: it was open to the prisoner to show, by affidavit, that there was no evidence from which the justice might reasonably draw an inference that the relation of master & servant existed between prisoner & his employer, as that would show that the justice had no jurisdiction.—*Re Bailey, Re Collier* (1854), 3 E. & B. 607; 23 L. J. M. C. 161; 18 Jur. 930; 2 C. L. R. 1645; 118 E. R. 1269; *sub nom. R. v. Collier*, 23 L. T. O. S. 111; 18 J. P. 630; *sub nom. R. v. Bailey*, 2 W. R. 422.

Annotations:—*Refd.* *Re Authers* (1889), 22 Q. B. D. 345. *Mentd.* *R. v. Nunneley* (1858), E. B. & E. 852; *Buorleuch v. Metropolitan Board of Works* (1870), L. R. 5 Exch. 221; *Mid. Ry. v. Edmonton Union Grdns.*, [1895] 1 Q. B. 357.

558. —]—The Ct. of Exch. may, by an application for a *habeas corpus*, inquire by affidavits into facts necessary to give the magistrate jurisdiction.—*Re Baker* (1857), 2 H. & N. 219; 26 L. J. M. C. 155; 29 L. T. O. S. 218; 21 J. P. 486; 3 Jur. N. S. 937; 5 W. R. 661; 157 E. R. 92.

Annotations:—*Refd.* *Re Authers* (1889), 22 Q. B. D. 345. *Mentd.* *Re Smith* (1858), 3 H. & N. 227; *R. v. Youle* (1861), 6 H. & N. 753; *Whittle v. Frankland* (1862), 2 B. & S. 49; *Unwin v. Clarke* (1866), L. R. 1 Q. B. 417; *James v. Evans* (1897), 77 L. T. 78.

559. —]—Upon an application for a writ of *habeas corpus* the ct. has power, if satisfied upon affidavit that the conviction, in

552 i. Inferior court—Acting within jurisdiction—Summary trial of indictable offence.]—A conviction by a magistrate under sects. of the Criminal Code relating to the summary trial of indictable offences may be brought up for review by a writ of *habeas corpus*.—*R. v. St. Clair* (1900), 27 A. R. 308.—CAN.

552 ii. — Erroneous decision.]—Even if the decision of a stipendiary magistrate is erroneous, it cannot be reviewed upon *habeas corpus*.—*R. v. Clements* (1903), 34 N. S. R. 443.—CAN.

552 iii. —]—*R. v. Stark* (1911), 18 W. L. R. 419; 21 Man. L. R. 345.—CAN.

o. Courts of record—General sessions.]—The record of a ct. of general session is not reviewable on *habeas corpus*.—*Re Armstrong* (1878), 4 C. L. R. 101.—AUS.

p. — Quarter sessions.]—The proper proceeding to reverse a judgment of the ct. of quarter sessions is by writ of error, not *habeas corpus*.—*R. v. Powell* (1861), 21 U. C. R. 215.—CAN.

q. — County court judge's criminal court.]—The county ct. judge's criminal ct. is a ct. of record, & its proceedings are not reviewable upon *habeas corpus*, but only upon writ of error.—*R. v. Murray* (1898), 28 O. R. 549.—CAN.

r. — Where decision is final & conclusive—Not reviewable on habeas corpus.]—The decision of the county ct. in appeal from a summary conviction is final & conclusive, & cannot be reviewed on *habeas corpus*.—*R. v. Bramish* (1901), 8 B. C. R. 171.—CAN.

pursuance of which appct. was imprisoned, was made without jurisdiction, to order him to be discharged.—*Re* AUTHERS (1889), 22 Q. B. D. 345; 60 L. T. 454; 53 J. P. 116; 37 W. R. 320; 5 T. L. R. 216; 16 Cox, C. C. 588; *sub nom.* *Ex p.* ANTHERS, 58 L. J. M. C. 62, D. C.

Mere formal defect in commitment—No ground for interference.]—*See* Nos. 513–515, *ante*, 656, *post*.

D. To prevent Unlawful Detention.

(a) Of Wife.

See HUSBAND & WIFE.

(b) Of Lunatics.

See LUNATICS & PERSONS OF UNSOUND MIND.

(c) Of Other Persons.

560. Slaves—Brought to England.]—SOMMERSETT'S CASE (1772), 20 State Tr. 1; *sub nom.* SOMERSET *v.* STEWART, Lofft 1; 98 E. R. 499. *Annotations:—*Consd. *Forbes v. Cochrane & Cockburn* (1824), 2 State Tr. N. S. 147; *The Slave Grace* (1827), 2 State Tr. N. S. 273. *Reid. R. v. Thomas Dutton* (1785), 4 Doug. K. B. 300; *Joffreys v. Boosey* (1854), 4 H. L. Cas. 819; *Worms v. De Valdor* (1880), 49 L. J. Ch. 261. *Mentd.* Canadian Prisoners' Case (1839), 3 State Tr. N. S. 963; *Fenton v. Livingstone* (1859), 33 L. T. O. S. 335.

561. ———.]—*Re* GOOTOO & INYOKWANA (1891), 35 Sol. Jo. 481.

562. Foreigner—Exhibited for money in England.]—The secretary of a society laid before the ct. affidavits suggesting probable cause to believe that a helpless & ignorant foreigner had been brought into this country, & was being exhibited for money, against her consent, by those in whose keeping she was:—*Held*: a rule must be granted upon her keepers to show cause why a writ of *habeas corpus* should not issue to bring her before the ct.—*HOTTENTOT VENUS' CASE* (1810), 13 East, 195; 104 E. R. 344.

*Annotations:—**Reid. Re Canadian Prisoners* (1839), 7 Dowl. 208. *Mentd. R. v. Riall, Re Fetherston* (1860), 3 L. T. 122.

563. Apprentice serving indentures—Improperly detained by master.]—(1) Upon a *habeas corpus* on which the gaoler returns a commitment, the ct. will only try the validity of the commitment upon the face of it, & where a return was that an apprentice was committed for absenting himself from his master's service, under 20 Geo. 2, c. 19, s. 4, which appeared good, the ct. remanded the apprentice, although it was sworn that he was bound when a minor, & that when of full age he avoided his indentures.

(2) A *habeas corpus* cannot be to discharge an

apprentice when of age from indentures. *Semble*: it should be to bring up the apprentice from some custody or improper control over his person, as that of the master, if he detains him by force in his service.—*Ex p.* GILL (1806), 7 East, 376; 103 E. R. 146; *sub nom.* *R. v. FENWICK, Ex p. GILL, 3 Smith, K. B. 369.*

(d) By Naval and Military Authorities.

See ROYAL FORCES.

E. To obtain Custody of Infants.

See INFANTS & CHILDREN.

Illegitimate children.]—*See* BASTARDY, Vol. III., pp. 381–383, Nos. 201–204, 209, 212, 213, 217.

F. To release on Bail.

564. General rule.]—*Re* FROST (1888), 4 T. L. R. 757, D. O.

*Annotation:—*Consd. *R. v. Phillips* (1922), 86 J. P. 188.

565. When writ granted by King's Bench—Issue of certiorari to bring depositions into court.]—When the Ct. of K. B. grants a *habeas corpus* that a prisoner may be admitted to bail for a crime, they always direct a *certiorari* to issue, to bring the depositions into that ct.—*R. v. GITTUS* (1824), 3 L. J. O. S. K. B. 55.

Right to be released on bail.]—*See* CRIMINAL LAW & PROCEDURE.

SUB-SECT. 4.—PROCEDURE.

A. Application for the Writ.

(a) Who may apply.

566. Husband—Wife detained.]—*R. v. BROOKE & FLADGATE, GREGORY'S CASE*, No. 781, *post*.

567. Wife—Husband detained.]—A wife may move in person for a *habeas corpus* on behalf of her husband.—*Ex p.* COBBETT (1851), 15 Q. B. 182, n.; 117 E. R. 427.

See, further, HUSBAND & WIFE.

568. Relative of person detained—Father.]—*Re* THOMPSON, No. 729, *post*.

569. ——— Sister.]—*Habeas corpus* granted on the application of a sister of an orphan girl under fourteen, to remove her from an asylum where appct. was denied access to her.—*Re* DALEY (1860), 2 F. & F. 258.

570. Agent or friend—Of prisoner.]—ASHBY

PART V. SECT. 1, SUB-SECT. 3.—D. (c).

a. Foreigners—Under sentence of deportation.]—*Ex p.* MAGGI (1913), 18 S. R. N. S. W. 150; 35 N. S. W. W. N. 70.—AUS.

b. ———.]—*Re* LEE SAN (1904), 10 B. C. R. 270.—CAN.

a. ———.]—IKKZOYAY *v.* CANADIAN PACIFIC RY. CO. (1907), 12 B. C. R. 454.—CAN.

b. ———.]—*R. v. DUTTON, Re* WOO JIN (1908), 5 E. L. R. 543.—CAN.

c. ———.]—*Re* GARDNER (1913), 13 E. L. R. 147; 12 D. L. R. 610.—CAN.

d. ———.]—*Habeas corpus* will lie in respect of a deportation order made by an officer whose jurisdiction to act in lieu of a Board of Inquiry is not shown on the face of the order.—*R. v. BARNSTAD, Ex p. HANSON & MOLLER*, [1920] 55 D. L. R. 287.—CAN.

PART V. SECT. 1, SUB-SECT. 3.—F.

564. General rule.]—Where statutory powers have been given to inferior

tribunals to try indictable offences & where the same or like methods of reviewing their judgments are also provided as in the case of trials upon indictment in the ordinary course & the remedies by way of *habeas corpus* are excluded, the right to bail, on a motion for *habeas corpus* ceases to exist, unless given by statute, but only because the remedy by *habeas corpus* is gone. Except in such cases a ct. having the inherent power of the former ct. of King's Bench has jurisdiction to admit to bail pending the disposition of an application for *habeas corpus*, unless the party is in custody on an execution in a criminal matter tried on indictment, according to the due course of the common law.—*R. v. IWANACHUK*, [1913] 3 W. W. R. 207; 13 Alta. L. R. 543.—CAN.

565. When writ granted by King's Bench.]—Where a prisoner is charged with misdemeanours the King's Bench under *Habeas Corpus Act* cannot refuse bail although a justice has discretion in such case to grant or refuse bail.—*R. v. LARKIN* (1913), 43 L. T. 95.—IR.

e. When writ granted by Supreme Court—Charge laid in another province.]—On application for a writ of *habeas corpus*, the Supreme Court of Alberta has jurisdiction to admit to bail one arrested on a criminal charge laid in another province, though the arrest be legal, & to make the condition of the recognisance that the prisoner shall surrender himself to the proper officer in the province in which the charge is pending against him.—*R. v. HUGHES* (1914), 28 W. L. R. 559; 6 W. W. R. 1120.—CAN.

f. ——— Concurrent charges—Conditions of bail.]—D. was committed to gaol & refused bail on charges of theft & escaping from the city prison. A prosecution was also commenced against him under N. S. Temperance Act, & a warrant was also out to collect a penalty for another conviction. D. applied for writs of *habeas corpus* & *certiorari* in aid under Liberty of Subject Act to be admitted to bail:—*Held*: bail should be allowed conditioned to appear & take his trial on the various charges against him.—*R. v. DRAKE* (1918), 29 Can. Crim. Cas. 174.—CAN.

Sect. 1.—Ad subjiendum: Sub-sect. 4, A. (a), (b) & (c).]

v. WHITE (1704), as reported in 14 State Tr. 695, H. L.

Annotations:—*Mentd. R. v. Paty (1704), 2 Ld. Raym. 1105; Kendall v. John (1708), Fortes. Rep. 104; R. v. Loggen & Froome (1718), 1 Stra. 73; Selwyn v. Honeywood (1744), 9 Mod. Rep. 419; Myddelton v. Wynn (1746), Willes, 597; R. v. Midhurst Borough (1750), 1 Wils. 283; R. v. Montacute (1750), 1 Wm. Bl. 60; Chapman v. Pickersgill (1762), 2 Wils. 145; Milward v. Serjeant (1786), 14 East, 60, n.; Drewe v. Coulton (1787), 1 East, 563, n.; R. v. Pasmore (1789), 3 Term. Rep. 199; Schinotti v. Burnstead (1796), 6 Term. Rep. 646; Harman v. Tappenden (1801), 1 East, 555; Tewkesbury Corp. v. Diston (1805), 6 East, 438; Burdett v. Abbott (1811), 14 East, 1; Cullen v. Morris (1819), 2 Stark. 577; Williams v. Mostyn (1838), 4 M. & W. 145; Stockdale v. Hansard (1839), 9 Ad. & El. 1; Ferguson v. Kincauld (1842), 9 Cl. & Fin. 251; Hampden v. Maconullen (1843), 3 Notes of Cases, Supp. 1; Harnett v. Matfield (1847), 16 M. & W. 257; Pryce v. Belcher (1847), 4 C. B. 866; R. v. James (1850), 3 Car. & Kir. 167; Embrey v. Owen (1851), 6 Exch. 353; King v. Rochdale Canal Co. (1851), 14 Q. B. 136; Crouch v. L. & N. W. Ry. (1854), 14 C. B. 255; *Ex p. Mawby* (1854), 18 Jur. 906; Nicklin v. Williams (1854), 10 Exch. 259; Tozer v. Child (1857), 7 E. & B. 377; Waite v. N. E. Ry. (1858), E. B. & E. 728; Chamberlain v. West End of London & Crystal Palace Ry. (1862), 2 B. & S. 617; Fotherby v. Met. Ry. (1866), L. R. 2 C. P. 188; Smith v. Thackeray (1866), L. R. 1 C. P. 564; Basché v. Matthews (1867), L. R. 2 C. P. 684; Morgan v. Met. Ry. (1868), 37 L. J. C. P. 265; Metropolitan Board of Works v. McCarthy (1874), L. R. 7 H. L. 243; Wood v. Wood (1874), L. R. 9 Exch. 190; Humphreys v. Cousins (1877), 46 L. J. Q. B. 438; Bowen v. Hall (1881), 6 Q. B. D. 333; Dalton v. Angus (1881), 6 App. Cas. 740; Spaight v. Tedcastle (1881), 44 L. T. 589; Bradlaugh v. Erskine (1883), 47 L. T. 618; Mills v. Armstrong, The Bernina (1888), 13 App. Cas. 1; Ratcliffe v. Evans, [1892] 2 Q. B. 524; Chaffers v. Goldsmid, [1894] 1 Q. B. 186; Allen v. Flood, [1898] A. C. 1; Clark v. London General Omnibus Co., [1906] 2 K. B. 648; I. R. Comrs. v. Joicey (No. 1), [1913] 1 K. B. 445; Palliser v. Dover Corp. & Dover Harbour Board (1914), 58 Sol. Jo. 379; Hammerton v. Dysart, [1916] 1 A. C. 57; Neville v. London Express Newspaper, [1919] A. C. 368; Weld-Bundell v. Stephens, [1920] A. C. 956; Simmonds v. Newport Abercarn Black Vein Steam Coal Co., [1921] 1 K. B. 616.*

571. — Of person detained.]—R. v. CLARKE, No. 677, post.

572. — Wife detained by husband.]—A husband being, until guilty of cruelty, or until judicial separation, entitled to the custody of his wife, & to detain her if she desires improperly to leave him, a *habeas corpus* obtained on her behalf against him, the affidavits in support of the application being made by friends of hers, will be discharged.—*Re PRICE* (1860), 2 F. & F. 263.

573. Philanthropic society.—On behalf of helpless & ignorant foreigner.]—HOTTEHOT VENUS' CASE, No. 562, ante.

574. — To prevent slavery.]—Re GOOTOO & INYOKWANA (1891), 35 Sol. Jo. 481.

575. Not employer.—On behalf of detained apprentice.]—Ex p. LANDSDOWN, No. 504, ante.

576. Not a mere stranger.—Having no authority from prisoner.]—A rule was obtained for a *habeas corpus* to bring up a lunatic confined in an asylum in this country under Irish medical certificates:—*Held*: it must be discharged, there being no affidavit to show that the party promoting the application was duly authorised by the lunatic.

A mere stranger has no right to come to the ct. & ask that a party who makes no affidavit, & who is not suggested to be so coerced as to be incapable of making one, may be brought up by *habeas corpus* to be discharged from restraint (JERVIS, C.J.).—*Ex p. CHILD* (1854), 15 C. B. 238; 139 E. R. 413; *sub nom. Re FITZGERALD, Ex p. CHILD*, 2 C. L. R. 1801.

PART V. SECT. 1, SUB-SECT. 4.—
A. (b).

577 i. In vacation.]—Judges of the superior cts. of common law can order writs of *habeas corpus ad subjiendum*

in vacation.—*Re HAWKINS* (1863), 3 P. R. 239.—**CAN.**

577 ii. —.]—Re EVERARD (1862), 14 Ir. Jur. 346.—**IR.**

g. During term.]—To avail of the

Whether in person or by counsel.]—See No. 550, ante, Nos. 593, 594, post.

(b) Time and Mode of.

See C. O. R., rr. 216, 217, 218.

577. In vacation.]—JENKES' CASE (1676), cited 2 Swan. at pp. 12, 43; 6 State Tr. 1190; 36 E. R. 518, 524.

Annotations:—*Consd. Crowley's Case* (1818), 2 Swan. 1; *Watson's Case* (1839), 9 Ad. & El. 731.

578. —.]—Habeas corpus issued in vacation, returnable immediately before a judge, does not expire by the commencement of the term.—*R. v. SHEBBEARE* (1758), 1 Burr. 460; 97 E. R. 403.

Annotations:—*Refd. Watson's Case* (1839), 9 Ad. & El. 731. *Mentd. R. v. Shipley* (1784), 4 Doug. K. B. 73.

579. —.]—R. v. CLARKE, No. 677, post.

580. —.]—In Hilary vacation a habeas corpus was issued at common law, tested the last day of Hilary term, directed to M., to bring before the judge at his chambers the body of W. About two or three days before the following term a special return was made to the writ. It being so near term, the judge ordered the return to be made in full ct.—*R. v. MEAD* (1758), 1 Burr. 541; 2 Keny. 279; 97 E. R. 440.

Annotations:—*Consd. Re Cochran* (1840), 8 Dowl. 630; *R. v. Jackson* (1891), 64 L. T. 679. *Refd. Watson's Case* (1839), 9 Ad. & El. 731; *Ex p. Sandilands* (1852), 17 Jur. 317. *Mentd. Guth v. Guth* (1792), 3 Bro. C. C. 614; *Boord v. Webb* (1800), 2 Bos. & P. 93; *St. John v. St. John* (1805), 11 Ves. 526; *Westmeath v. Westmeath* (1821), Jac. 126; *Westmeath v. Sallabury* (1831), 5 Bl. N. S. 339; *Jones v. Waite* (1839), 5 Bing. N. C. 341.

581. —.]—CROWLEY'S CASE, No. 666, post.

582. —.]—WATSON'S CASE, No. 585, post.

583. —.]—CARUS WILSON'S CASE, No. 650, post.

584. — By application at chambers.]—The writ of *habeas corpus ad subjiendum* ought not to be issued as of course, but obtained by motion to the ct. or by application to a judge in vacation.—*ANON.* (1823), 2 L. J. O. S. C. P. 11.

585. —.]—(1) At common law, a judge of the Ct. of K. B. may grant in vacation a writ of *habeas corpus ad subjiendum*, returnable immediately at chambers, to bring up the body of a party in custody in execution of a criminal sentence.

(2) After the return to the *habeas corpus* has been put in & read, it is considered as filed; but the ct. has nevertheless power to amend it, even after judgment.

(3) The return must be taken to be true on the motion to discharge out of custody, & need not be verified by affidavit or otherwise.

(4) The return need not set out the indictments, warrants or other documents the effect of which it purports to state.

It appeared, on affidavit, that in the mandatory part of letters patent addressed to the master of the bark in which certain prisoners were conveyed to prison, the prisoner's name was omitted, though it stood in the recital, & that the return to a *habeas corpus* addressed to the gaoler, as originally drawn, had set out the letters patent, which were also incorrect in other particulars, but that the present return, stating the substance as above, had been drawn by counsel, & filed instead of the original return:—*Held*: (5) the gaoler might substitute a return drawn by counsel for that originally prepared; (6) the letters patent were immaterial, but, had the return been intentionally false, the gaoler

relief afforded by Habeas Corpus Act, s. 7, a petition must be presented the first day of the first week of term.—*R. v. LAWSON* (1861), 4 Nfld. L. R. 532.—**NFLD.**

would not have been protected by the immateriality, nor by the circumstance that the prisoner had not been injured by the falsehood.

(7) It appearing by affidavit that the omission of the name was unknown to the gaoler, an attachment against him was refused, though the ct. considered him blamable for negligence.

(8) The provisions made by the law for the liberty of the subject have been found for ages effectual, to an extent never known in any other country, through the medium of the summary right to the writ of *habeas corpus* (LORD DENMAN, C.J.).—WATSON'S CASE (1839), 9 Ad. & El. 731; 112 E. R. 1389; *sub nom.* R. v. WIXON, 8 L. J. Q. B. 129; *sub nom.* R. v. BATCHELDER, 1 Per. & Dav. 516; 2 Will. Woll. & H. 19; *sub nom.* CANADIAN PRISONERS' CASE, 3 State Tr. N. S. 963.

Annotations :—As to (2) *Reid. Re Clarke* (1842), 2 Q. B. 619; *Bowdler's Case* (1848), 12 Q. B. 612; *Swann v. Dakins* (1855), 3 C. L. R. 602; *Re Timson* (1870), L. R. 5 Exch. 257. As to (3) *Reid. Re Hakewill* (1852), 12 C. B. 223. As to (4) *Reid. R. v. Mount* (1875), L. R. 3 P. C. 283. *Generally, Reid. Re Hammond* (1846), 15 L. J. M. C. 136; *Re Brennan v. Gallan* (1847), 11 Jur. 775; *R. v. Brixton Prison, Ex p. Stallman* (1912), 107 L. T. 553. *Mentd. Re Barnard, Re Stat. 6 & 7 Vict. c. 73, Ex p. Wetherell* (1853), 20 L. T. O. S. 241; *Atlee v. Hook* (1854), 2 W. R. 511.

586. During term.—By motion.—Where in custody for crime.]—Debt was brought against a husband & wife on an obligation sealed by them both, & both were taken by *capias*. It was moved for a *habeas corpus* to bring them into ct., to the intent that the husband only might be committed in custody, & the wife discharged :—*Held* : this *habeas corpus* for removing the bodies might have been for them without motion, but where the party was committed for a crime, there it ought to be on motion.—SLATER v. SLATER (1860), 1 Lev. 1; 83 E. R. 266.

Annotation :—*Reid. Hobhouse's Case* (1820), 3 B. & Ald. 420.

587. ———.]—HOBHOUSE'S CASE, No. 464, ante.

588. ———.]—ANON., No. 584, ante.

589. ———.]—PRECEDENCE OVER OTHER MOTIONS.]—The rule giving precedence to motions affecting the liberty of the subject only holds where a person in custody is brought up by *habeas corpus*, & does not extend to showing cause against a rule for a *habeas corpus*.—*Re THOMPSON* (1860), 6 Jur. N. S. 1121; *subsequent proceedings*, 6 H. & N. 193.

590. Application at chambers.—Adjournment into court.]—*Re DOLBEN* (1896), Lord Halsbury's Laws of England, Vol. X. p. 59.

591. ———.]—Applt., a married woman, left her husband, taking with her the two children of the marriage. The husband took out a summons for a writ of *habeas corpus ad subjiciendum*, & in his

affidavit in support he alleged that applt. was not a fit & proper person to have charge of the children. The wife made an affidavit denying the allegations of her husband, stating that she was applying for a judicial separation, & that the custody of the children would only properly be decided in those proceedings. On appeal from an order giving the father the custody of the children :—*Held* : the facts being in dispute, the order appealed from must be set aside, & the ct. would direct that the husband should apply for a writ of *habeas corpus* requiring the children to be brought before the judge in chambers, when all the facts could be dealt with, & the question of the custody of the children decided.—*Re BUSSELL*, (1919), 63 Sol. Jo. 835.

592. Whether by counsel or in person.]—*Re NEWTON*, No. 550, ante.

593. ———.]—Wife on behalf of husband.]—*Held* : (LORD CAMPBELL, C.J.) in an application directly for a *habeas corpus* a wife may be heard on behalf of her husband.—COBBETT v. HUDSON (1850), 15 Q. B. 988; 16 L. T. O. S. 124; 14 Jur. 982; 117 E. R. 731.

Annotation :—*Mentd. Oldfield v. Cobbett* (1851), 14 Beav. 28.

594. ———.]—Father on behalf of child.]—*Ex p. SIGISMUND* (1901), Lord Halsbury's Laws of England, Vol. X. p. 56.

(c) Affidavits in Support.

See C. O. R., rr. 5, 6, 8, 9, 10.

595. Necessity for.]—HOBHOUSE'S CASE, No. 464, ante.

596. ———.]—The ct. will not grant a *habeas corpus* to bring up a prisoner for the purpose of being discharged on the ground that he is illegally in custody unless there be an affidavit from himself, or it be shown that he is so coerced as to be unable to make one.—*Re PARKER, CANADIAN PRISONERS' CASE* (1839), 5 M. & W. 32; 2 Horn. & H. 45; 151 E. R. 15; *sub nom.* CANADIAN PRISONERS' CASE, 3 State Tr. N. S. 963; 7 Dowl. 208; 8 L. J. Ex. 81; 3 J. P. 64.

Annotations :—*Mentd. Re Barnard, Re Stat. 6 & 7 Vict. c. 73, Ex p. Wetherell* (1853), 20 L. T. O. S. 241; *Re Allen* (1860), 3 E. & E. 338; *R. v. Mount* (1875), L. R. 6 P. C. 283; *R. v. Brixton Prison, Ex p. Stallman* (1912), 107 L. T. 553.

597. ———.]—Motion to bring up body of sheriff.—Not necessary.]—*R. v. WHALEY, M'EOY v. M'INTOSH* (1819), 1 Chit. 249.

598. ———.]—*R. v. MIDDLESEX (SHERIFF)* (1834), 4 L. J. C. P. 24.

599. By whom made.—Applicant.—Unless unable to make.—Through coercion.]—*Re PARKER, CANADIAN PRISONERS' CASE*, No. 596, ante.

600. ———.]—*Ex p. CHILD*, No. 576 ante.

590 i. Application at chambers.]—A judge in chambers can grant a writ of *habeas corpus*.—*Re PATON* (1853), 4 Gr. 147.—CAN.

b. In practice court.]—A judge in practice ct. cannot grant a rule nisi for a *habeas corpus ad subjiciendum*.—*R. v. SMITH* (1865), 24 U. C. R. 480.—CAN.

k. To the court.]—An application for a writ of *habeas corpus* is properly made to the ct.—A. G. v. SULLIVAN (1842), 5 L. L. R. 254.—IR.

l. To Divisional Court.—On writ of error from decision of King's Bench Division.]—When it becomes necessary to bring up a prisoner to be present at the argument of an appeal from the decision of K. B. Div. on a writ of error, application for a writ of *habeas corpus* should be made to Div. Ct.—O'BRIEN v. R. (1890), 26 L. R. Ir. 451, 495.—IR.

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PART V. SECT. 1, SUB-SECT. 4.—A. (c).

595 i. Necessity for.]—A writ of *habeas corpus* will issue only when it appears by affidavit that there was a probable & reasonable ground for its issue.—*Re ARABIN (Alias IREDA)* (1890), Cout. 95.—CAN.

595 ii. ———.]—*Re McMURRER* (1907), 2 E. L. R. 436.—CAN.

595 iii. ———.]—*Re WATERS* (1887), 6 N. Z. L. R. 545.—N.Z.

595 iv. ———.]—A writ of *habeas corpus* may be applied for without affidavit.—*R. v. HEATH* (1744), 18 State Tr. 1.—IR.

599 i. By whom made.—Applicant.—Unless unable to make.]—The affidavit for a *habeas corpus* should be made by prisoner himself, or some reason shown for his not making it.—*Re ROSS* (1864), 3 P. R. 301.—CAN.

599 ii. ———.]—The affidavit upon which a rule for a writ of *habeas corpus* is moved must either be made by prisoner himself, or show that he consents to the motion, or that he is prevented by coercion from so consenting.—*Re WINARA PARATA* (1880), O. B. & F. 31.—N.Z.

599 iii. ———.]—Or on his behalf.]—The affidavit must be made by or on behalf of prisoner.—*Re McMURRER* (1907), 2 E. L. R. 436.—CAN.

599 iv. ———.]—It should appear from the affidavits on which the rule nisi for a *habeas corpus* is moved for that the proceedings are being taken with the consent of the prisoner, but if, in the course of the argument on moving the rule absolute, an affidavit to that effect appears, that is sufficient.—*Re CHRISTIE, R. v. McDONALD* (1889), 7 N. Z. L. R. 361.—N.Z.

Sect. 1.—*Ad subjiendum*: Sub-sect. 4, A. (c) & (d), B. & C. (a).]

601. ————.]—O'Brien having been deported to Ireland, an application for a writ of *habeas corpus* was made to test the validity of the order of the Home Secretary. The affidavit in support of the application was made by O'Brien's sister & not by O'Brien, although there was no evidence to show that he was so coerced as to be unable to make an affidavit, on the ground that it was the last day of the sittings on which such an application could be made, & it would have been impossible to get an affidavit in time from a person interned in Ireland:—*Held*: sufficient ground for departing from the ordinary rule had not been shown; it was not a case where an affidavit from the person concerned could properly be dispensed with.—*Ex p.* O'BRIEN (1923), *Times*, March 24, D. C.; *subsequent proceedings*, 39 T. L. R. 413, D. C.; *sub nom.* R. v. HOME SECRETARY, *Ex p.* O'BRIEN, 39 T. L. R. 487, C. A.; *sub nom.* HOME SECRETARY v. O'BRIEN, *Times*, May 15, II. L.

602. ———— Or person responsible for costs.]—*Re* CARTER (1893), 95 L. T. Jo. 37, D. C.

603. Sufficiency of—Detention against will—Wife detained from husband.]—On a motion for a *habeas corpus* to a private person on the application of a husband, to bring up the body of his wife, the affidavit must state that she is detained against her will.—*R. v.* WISEMAN, *Ex p.* NEWTON (1805), 2 Smith, K. B. 617.

604. ———— Illegality of imprisonment—Imprisonment in Jersey.]—The ct. will not grant a *habeas corpus* to bring up a person confined under civil process in the gaol at Jersey, unless it clearly appear by the affidavits that such imprisonment is illegal.—*Ex p.* STIRLING (1851), 15 J. P. 147.

605. ————.]—Appct. was arrested in 1845 in the island of Jersey under an *ordre provisoire* of the ct. of the island for debt & had been in prison since that time. It was stated upon affidavits that it was illegal to arrest British subjects on mesne process in Jersey for simple contract debts, but it was not denied that it was legal to arrest strangers about to leave the island, nor that appct., who was a stranger, was about to leave the island:—*Held*: the affidavits were not sufficiently distinct for a writ of *habeas corpus* to issue.—*Ex p.* PATCH (1857), 30 L. T. O. S. 121.

606. ————.]—*Re* COBBETT (1852), 18 L. T. O. S. 257.

607. ————.]—If the *ca. sa.* under which a prisoner was taken in execution be regular on the face of it, the ct. will not grant a *habeas corpus* to

m. Sufficiency of.—Where a judge granted a *habeas corpus* against two persons to bring up the bodies of infant children, the ct. would not set aside the writ merely because the affidavits did not show clearly that they were in the custody of both.—*Re* SHAUGHNESSY (1881), 21 N. B. R. 182.—CAN.

n. ———— Should state an application to the person detaining for the cause of detention.]—*R. v.* FITZGERALD (circa 1800), Rowe, 412.—IR.

o. ———— Cannot contradict recital in warrant of commitment.]—*Re* DEVANEY (1866), 3 W. W. & A.B. 103.—AUS.

p. Irregularities in—Application refused.—On motion for a *habeas corpus*, the affidavits in support had not been served upon the interested party, were not indorsed with a memorandum stating on whose behalf they were filed, & were interlined & corrected without being initialed & re-written in the margin by the commissioner:—*Held*: the irregularities

should not be condoned.—*Re* HAYES (1901), 21 C. L. T. 87.—CAN.

q. Whether requisite to state contents at the bar.—Where a conditional order was sought for a *habeas corpus*, & the circumstances which necessitated the writ were domestic differences, which it would be distressing to have made public, the ct. directed the affidavits to be handed in for perusal, & did not require them to be stated at the bar.—ANON. (1839), 2 I. L. R. 160.—IR.

PART V. SECT. 1, SUB-SECT. 4.—A. (d).

611 i. May be made to successive courts—On previous refusal.]—An appct. for a writ of *habeas corpus* has the right to take the opinion of every judge & every ct. as to the propriety of the detention complained of, & the judge or ct. is bound to consider the question independently of any previous decision.—*Ex p.* ROWLANDS (1896),

bring up the body of the prisoner with a view to his discharge, on a mere affidavit that there is no judgment to support the writ of *ca. sa.*—*Re* COBBETT (1861), 3 L. T. 631; 25 J. P. 88.

608. Where conflicting—Whether issue directed to be tried.]—The affidavits disclose circumstances which give rise to doubts as to the validity of the document by which appct. was appointed, & as we cannot undertake to decide that question upon the affidavits, we have come to the conclusion that an issue must be directed, & that question submitted to a jury (ARCHIBALD, J.).—*Re* ANDREWS (1873), L. R. 8 Q. B. 153; 28 L. T. 355; 21 W. R. 480.

Annotation:—*Mentd.* *Andrews v. Salt* (1873), 28 L. T. 686.

609. ————.]—*Re* GUERIN (1888), 58 L. J. M. C. 45, n.; 60 L. T. 538; 53 J. P. 468; 37 W. R. 269; 16 Cox, C. C. 596, D. C.

Annotation:—*Mentd.* *Ex p.* Bottomley, [1909] 2 K. B. 14.

610. ————.]—The ct. may come to a conclusion, as it has done in this case, that appct. is lawfully detained upon the evidence before it. The ct. is not bound to direct an issue to be tried by a jury. The ct. can always direct such an issue if the ct. is of opinion that justice requires it (LORD LINDLEY).—*Ex p.* GREGORY, [1901] A. C. 128; 70 L. J. P. C. 19; 83 L. T. 441, P. C.

(d) Renewal of Application.

611. May be made to successive courts—On previous refusal.]—A prisoner who sues out a writ of *habeas corpus ad subjiendum* is not bound by the decision of any one ct., but is entitled to take the opinion of all, as to the propriety of his imprisonment.—*Ea p.* PARTINGTON (1845), 13 M. & W. 679; 2 Dow. & L. 650; 14 L. J. Ex. 122; 9 J. P. 443; 9 Jur. 92; 153 E. R. 281.

Annotations:—*Re*ld. *Cox v. Hakes* (1890), 15 App. Cas. 506. *Mentd.* *Re* Newlands (1845), 9 Jur. 199; *Parker v. Bailey* (1847), 10 L. T. O. S. 169.

612. ————.]—*Re* COBBETT (1845), 5 L. T. O. S. 130.

613. ————.]—*Cox v. HAKES*, No. 508, ante.

B. Order for the Writ.

See C. O. R., rr. 232, 233, 239, 269.

614. Unconditional—Restraint of action against magistrate.]—If a writ of *habeas corpus* be granted, on the ground that the party has been illegally committed by a magistrate, the judge will not make it a part of the rule for issuing the writ, that the party shall not bring an action against the magistrate.—*Ex p.* HILL (1827), 3 C. & P. 225; 1 Man. & Ry. M. C. 105.

615. Must operate immediately—Not directed

16 N. S. W. L. R. 239; 12 N. S. W. W. N. 47.—AUS.

611 ii. ————.]—*Re* BOWACK (1892), 2 B. C. R. 210.—CAN.

611 iii. ————.]—*Re* HAYES (1901), 21 C. L. T. 87.—CAN.

611 iv. ————.]—Each successive judge to whom a *habeas corpus* application is made, must act upon his own view of the law; &, although deft.'s application had been twice refused, it was granted upon a third application.—*R. v.* JACKSON (1914), 27 W. L. R. 31.—CAN.

611 v. ———— Or on remand.]—Appct. can apply for a *habeas corpus* direct to any judge of the supreme ct. individually, & upon his refusing the writ or remanding him, he can apply to the full ct.—*Re* BOUCHER, Cases. Dig. 182.—CAN.

r. To Supreme Court of Canada—On previous refusal by Supreme Court of Province.—An application for a writ of *habeas corpus* was referred

to person outside jurisdiction.]—*R. v. PINCKNEY*, No. 495, *ante*.

616. Order nisi—In cases of lunatics.]—The ct. refused a writ of *habeas corpus*, commanding the keeper of a lunatic asylum to bring up the lunatic for the purpose of his being served with a writ of summons, but granted a rule calling on the keeper to show cause why a *habeas corpus* should not issue.—*MARSDEN v. JOHN* (1840), 9 L. J. Ex. 245.

617. ————]—*Re LLOYD* (1845), 9 J. P. Jo. 115.

618. ———— To avoid expense.]—*Ex p. CRESSWELL* (1844), 4 L. T. O. S. 119; 8 J. P. Jo. 758; *subsequent proceedings*, 4 L. T. O. S. 142.

619. ———— To avoid bringing up party unnecessarily.]—*Re EGINGTON*, No. 718, *post*.

620. ———— In extradition cases.]—*R. v. GANZ* (1882), 9 Q. B. D. 93; 51 L. J. Q. B. 419; 46 L. T. 592.

Annotations:—*Consd. R. v. Brixton Prison, Ex p. Savarkar*, [1910] 2 K. B. 1056. *Mentd. Ex p. Plot* (1883), 48 L. T. 120; *R. v. Brixton Prison, R. v. Holloway Prison*, [1912] 2 K. B. 678.

See, further, EXTRADITION & FUGITIVE OFFENDERS.

621. ———— When discharged—Illegality of custody remedied—Issue of warrant.]—(1) Where after a rule for a *habeas corpus* has been granted, a warrant is issued which renders the custody lawful, the ct. will discharge the rule.

(2) Where a rule is granted for a *habeas corpus* to bring up a bkpt. in custody for not answering satisfactorily, the ct. will if the warrant be very long make it part of the rule, that cause may be shown without taking an office copy of the warrant.—*Ex p. DAUNCEY* (1843), 12 M. & W. 271; 13 L. J. Ex. 165; 2 L. T. O. S. 171; 8 J. P. 123; 8 Jur. 829; 152 E. R. 1200.

Annotations:—*As to (1) Reid. Re Terraz & Extradition Acts*, 1870 & 1873 (1878), 39 L. T. 502. *Generally, Mentd. Re Lord* (1847), 11 J. P. 696.

622. ———— Office copy of warrant—Dispensed with.]—*Ex p. DAUNCEY*, No. 621, *ante*.

623. ———— Arguments in support—Limitation of.]—Upon supporting a rule, counsel will not be permitted to argue any points decided upon moving for the rule *nisi*.—*Ex p. THOMPSON* (1860), 3 L. T. 318.

Annotation:—*Mentd. Wilkinson v. Dutton* (1863), 3 B. & S. 821.

624. Order absolute in first instance—Where justice may be defeated—Removal of infant from jurisdiction.]—Where it appeared likely that if notice of the application were given the infant would be removed beyond the jurisdiction, the ct. granted a writ of *habeas corpus*, at the instance of the father of an infant between seven & eight years of age, commanding the mother, from whom the appt. was divorced, & her father to bring the infant into ct., without any previous demand.—*Ex p. WHITE* (1853), 13 C. B. 680; 21 L. T. O. S. 76; 1 W. R. 289; 138 E. R. 1367.

625. Court may refuse—Person no longer detained.]—*Ex p. CRESSWELL* (1844), 4 L. T. O. S. 142; 8 J. P. Jo. 805.

by the judge to the Supreme Ct. of the Province & was refused. On application subsequently to a judge of the Supreme Ct. of Canada, in chambers:—*Held*: under the circumstances it would be improper to interfere with the decision of the provincial ct.—*Re WHITE* (1901), 31 S. C. R. 383.—*CAN.*

s. Second application to same court on same grounds inadmissible.—Where the Supreme Ct. has refused an application for the issue of a writ of *habeas corpus*, a second application

with the same object & on the same material cannot be made to the ct.—*Ex p. BOUVY* (No. 2) (1900), 18 N. Z. L. R. 601.—*N.Z.*

PART V. SECT. 1, SUB-SECT. 4.—B.

t. Conditional—On undertaking not to bring action against any one on account of proceedings taken.—*R. v. HORTON* (1898), 31 N. S. R. 217.—*CAN.*

a. Order absolute in first instance

C. The Writ.

(a) Issue.

626. Must be from Crown Office—Prisoner detained on criminal charge.]—One who was committed to Newgate by commissioners of bkpt. for not answering satisfactorily to certain questions must, for the purpose of being surrendered by his bail in a civil suit, be brought up by a *habeas corpus* issued on the Crown side of the ct.—*TAYLOR'S CASE* (1803), 3 East, 232; 102 E. R. 586.

Annotations:—*Consd. Walsh v. Davies* (1806), 2 Bos. & P. N. R. 245. *Reid. Hodgson v. Temple* (1814), 5 Taunt. 503; *Easton's Case* (1840), 12 Ad. & El. 645. *Mentd. Ex p. Oliver* (1813), 2 Ves & B 244.

627. ————]—*WALSH v. DAVIES* (1806), 2 Bos. & P. N. R. 245; 127 E. R. 620.

Annotation:—*Apld. Freeman v. Weston* (1823), 1 Bing. 221.

628. ————]—*FREEMAN v. WESTON* (1823), 1 Bing. 221; 8 Moore, C. P. 81; 1 L. J. O. S. C. P. 72; 130 E. R. 90.

Annotation:—*Reid. Gibb v. King* (1845), 1 C. B. 1.

629. ———— Non-compliance with rule—Waiver of irregularity.]—A writ of *habeas corpus ad subjiciendum*, etc., granted by a judge of the Q. B. must issue from the Crown side of the ct. where prisoner is in custody for a criminal matter.

A prisoner committed to custody for a criminal offence sued out a writ of *habeas corpus* from the plea side of this ct., & obtained his discharge on the ground that the warrant of commitment was defective:—*Held*: the solr. for the Crown, who had opposed his discharge without then objecting that the writ had irregularly issued, had thereby waived the objection, & that he could not afterwards set aside the writ for irregularity.—*EASTON'S CASE* (1840), 12 Ad. & El. 615; 113 E. R. 959; *sub nom. Re EASTON*, 4 Per. & Dav. 558; 10 L. J. Q. B. 16; 5 Jur. 117; *sub nom. Re EATON*, 9 Dowl. 207; Woll. 49.

630. Effect of issue—Sheriff not empowered to release prisoner.]—Upon a *habeas corpus* to remove a prisoner, the sheriff or gaoler must not in the meantime suffer him to go at large for if he does he is liable for an escape. The writ only empowers the gaoler to bring him direct to the ct., & any liberty allowed the prisoner in the meantime is at the gaoler's peril.—*ANON.* (1687), Hard. 476; 145 E. R. 555.

Annotation:—*Reid. Hawkins v. Plomer* (1776), 2 Wm. Bl. 1048.

631. Second issue under original order—Mistake of court.]—A *habeas corpus* was issued under the usual order to bring up deft. in contempt, for the purpose of a motion to take the bill *pro confesso* against him. On his being brought up the motion was refused with costs, but the decision was reversed on appeal, and a new *habeas corpus* was afterwards issued under the same order for the purpose of a renewal of the motion:—*Held*: the second *habeas corpus* was regularly issued without a new order for it, on the ground that, owing to a mistake of the ct., the original order had not been satisfied by the first *habeas corpus*.—*NEEDHAM v. NEEDHAM* (1846), 1 Ph. 640; 15 L. J. Ch. 132; 6 L. T. O. S. 341; 10 Jur. 81; 41 E. R. 776, L. C.

—Where commitment illegal on its face.]—*Ex p. MESSIER* (1865), 1 L. C. L. J. 71.—*CAN.*

PART V. SECT. 1, SUB-SECT. 4.—C. (a).

631i. Second issue under original order.]—It is not a ground for setting aside a writ of *habeas corpus* that two original writs were issued exactly alike.—*Re SHAUGHNESSY* (1881), 21 N. B. R. 182.—*CAN.*

Sect. 1.—Ad subjiendum: Sub-sect. 4, C. (b), (c) & (d), & D. (a).]

(b) *Direction.*

632. General rule—Person having custody or control.]—A *habeas corpus* shall be always directed to him who has the custody of the body.—ANON. (1586), Godb. 44; 78 E. R. 27.

633. ———.]—R. v. CREWE (EARL), *Ex p. SEKGOME*, No. 493, *ante*.

634. Must be to specific official.]—A *habeas corpus* was directed to the sheriff or gaoler in the disjunctive:—*Held*: (1) the *habeas corpus* being directed in the disjunctive to the sheriff or gaoler was wrong, & would be quashed; (2) where a man was taken on a warrant of the sheriff, in pursuance of a writ to the sheriff, the *habeas corpus* ought to be directed to the sheriff, for the party was in his custody, & the writ itself must be returned, though it is otherwise where one was committed to the gaoler immediately, as in criminal cases.—R. v. FOWLER (1700), 1 Salk. 350; Fortes. Rep. 243; Holt. K. B. 334; 1 Ld. Raym. 586, 618; 91 E. R. 306.

Annotations:—Generally, Mentid. Lucy v. St. David's Bp. (1702), 7 Mod. Rep. 56; R. v. Watson (1702), 2 Ld. Raym. 817; R. v. Eyre (1736), 2 Stra. 1067; R. v. Turfoot (1736), Lea. temp. Hard. 314; Trobec v. Keith (1742), 2 Atk. 498; R. v. Payton (1797), 7 Term. Rep. 153; R. v. Dugger (1822), 1 Dow. & Ry. K. B. 460; R. v. Baines (1840), 12 Ad. & El. 210.

635. May be to several persons.]—*Re* DOUGLAS, No. 712, *post*.

636. ———.]—CARUS WILSON'S CASE, No. 650, *post*.

637. To gaoler—Where person in custody.]—R. v. FOWLER, No. 634, *ante*.

638. ———.]—WATSON'S CASE, No. 585, *ante*.

639. To sheriff—Person taken on sheriff's warrant.]—R. v. FOWLER, No. 634, *ante*.

640. Not to person out of jurisdiction—At time of making of order.]—R. v. PINCKNEY, No. 495, *ante*.

(c) *Service.*

See Habeas Corpus Act, 1816 (c. 100), ss. 2, 6; C. O. R., r. 220.

641. General rule—Original writ.]—A writ of *habeas corpus* can be properly served only by delivering the original writ itself to the person served, or to the principal person where there are more than one. If the original writ is not so served it is impossible for the person served, by appearing to the writ & waiving its proper service, to obey the writ, & consequently he cannot disobey it, and so be attached for contempt of ct.

If the original writ has not been delivered to the principal of several persons served, the service of a copy is not a good service upon any of the others.—R. v. ROWE (1894), 71 L. T. 578; 11 T. L. R. 29; 15 R. 119, D. C.

PART V. SECT. 1, SUB-SECT. 4.—
C. (b).

640 i. Not to person out of jurisdiction.]—The Supreme Ct. of Bombay has no power to issue a writ of *habeas corpus* except when directed to a person resident within those local limits wherein it has a general jurisdiction, or to a person out of those limits who is personally subject to its jurisdiction.—*Re* BOMBAY JJ. (1829), 1 Knapp, 1; 12 E. R. 222.—IND.

PART V. SECT. 1, SUB-SECT. 4.—
C. (c).

b. Sufficiency of service.]—It is sufficient to serve the writ of *habeas corpus* on the prosecutor & the con-

victing magistrate.—*Re* McMURRER (1907), 2 E. L. R. 436.—CAN.

c. — On agent of Attorney-General.]—Service of notice upon a local agent of the A.-G. is not sufficient unless the A.-G. has constituted him an agent for that purpose.—*It. v. LUCET* (1914), 29 W. L. R. 887; 7 W. W. R. 608.—CAN.

PART V. SECT. 1, SUB-SECT. 4.—
C. (d).

d. Form of.]—The writ of *habeas corpus* should be general.—*Re* McMURRER (1907), 2 E. L. R. 436.—CAN.

e. Marking writ.]—The omission

642. — Must be immediate.]—R. v. PINCKNEY, No. 495, *ante*.

643. Where original writ lost.]—A *habeas corpus* & bail piece were lost, & therefore it was prayed that there might be a new *habeas corpus*, & that the old bail put in might be allowed by the rule of ct.:—*Held*: a new *habeas corpus* should be made & a new bail piece, but the attorney who was clerk of the bails should attend the ct. to be examined as to whether the *habeas corpus* & bail piece were lost as was suggested.—*PEASE v. SHRIMPTON* (1651), Sty. 261; 82 E. R. 695.

644. Sufficiency of service—On "brother & agent" of party.]—*Re* HAKEWILL, No. 760, *post*.

645. — Where original not delivered to principal of several persons served—Service of copy on others insufficient.]—R. v. ROWE, No. 641, *ante*.

(d) *Other Matters.*

646. Teste—Sufficiency of.]—The teste of a *habeas corpus* is good without the title of the chief justice.

An attachment lies against the judge of an inferior ct. for not returning a *habeas corpus*.—VASPER v. EAST (1684), 2 Show. 349; 89 E. R. 977.

647. — Leave to amend.]—*Ex p.* DAVIES (1837), 4 Bing. N. C. 17; 6 Dowl. 181; 3 Hodg. 304; 5 Scott. 241; 132 E. R. 694; *sub nom.* ANON., 7 L. J. C. P. 17.

648. — Date of issue.]—*Qu.*: whether it is an irregularity for a writ of *habeas corpus ad satisfaciendum* to be tested on a different day from that on which it issues.—*NEWTON v. ROWE* (1843), 6 Man. & G. 779; 7 Scott. N. R. 543; 13 L. J. C. P. 73; 7 Jur. 1135; 134 E. R. 1107.

649. Sealing—Sufficiency of.]—*Re* BELSON, No. 476, *ante*.

650. Quashing the writ—Obtained by fraudulent representation.]—(1) The writ of *habeas corpus ad subjiendum* runs to Jersey.

(2) A Baron of the Exch. may, in vacation time, issue such writ, under the seal of the Ct. of Q. B., returnable in that ct. in term time.

(3) *Semble*: if such writ were obtained by fraudulent representation, this ct. would quash it on motion.

The writ directed the viscount & gaoler of Jersey to bring up the body of W. It was returned that the viscount & gaoler took, & the gaoler detained, W., by virtue of a sentence of the Royal Ct. of Jersey, which was set out, & which stated that, in a cause depending before them, W., when the ct. was about to deliver an interlocutory judgment, interrupted, protesting against the competency of the ct., & that the ct., conformably with an article in the Jersey laws, condemned W. to a fine & to ask pardon of the ct., & W. having refused to comply, he was sent to prison until he should have obeyed, that the sentence was legal according to

to mark a writ of *habeas corpus* in the manner prescribed is not a ground of objection that can be taken, particularly after inquiry into the merits of the cause of detention. The formality is one required for the instruction of the sheriff, gaoler or officer detaining the prisoner.—*BROWNE v. U.S.A.* (1906), Q. R. 30 S. C. 363.—CAN.

f. Quashing the writ—Issued im-providently.]—*Re* ROSS (1864), 3 P. R. 301.—CAN.

g. ———.]—*Re* ANDERSON v. VANSTONE (1894), 16 P. R. 243.—CAN.

h. — Whether done in absence of prisoner.]—An application to the ct. to quash a writ of *habeas*

the law of Jersey, that, by such law, the viscount & gaoler were obliged to take & the gaoler to detain, that they had not, & by such law could not have, any warrant other than the sentence, & that the ct. was presided over by the bailiff assisted by judges & had the power of punishing such a contempt in the manner directed by the sentence:—*Held*: (4) affidavits could not be received for the purpose of showing that the Royal Ct. had acted inconsistently with the law of Jersey; (5) as the words used might be, & were by the Royal Ct. adjudged to have been uttered in such a manner & tone as made them contemptuous, this ct. would consider that there had been a contempt; (6) it sufficiently appeared that W. had been legally sentenced & imprisoned.

(7) Objection having been made to the return on behalf of the prisoner, & counsel having been heard against the objection, one counsel was allowed to reply in support of it.—*CARUS WILSON'S CASE* (1845), 7 Q. B. 984; 6 State Tr. N. S. 183; 1 New Pract. Cas. 156, 193; 14 L. J. Q. B. 105, 201; 4 L. T. O. S. 311, 353, 373; 5 L. T. O. S. 52; 9 J. P. 648, 665; 9 Jur. 393, 394; 115 E. R. 759.

Annotations:—*As to* (1) *Reid. Re Crawford* (1849), 13 Q. B. 613; *Ex p. Anderson* (1860), 25 J. P. 116. *As to* (5) *Reid. Rainy v. Sierra Leone J.J.* (1853), 8 Moo. P. C. C. 47; *Ex p. Pater* (1864), 5 B. & S. 299. *As to* (6) *Reid. Re Crawford* (1849), 13 Q. B. 613; *Re Dimes* (1850), 19 L. J. Q. B. 158; *Dodd's Case* (1858), 2 De G. & J. 510; *Bell Cox v. Hakes & Penzance* (1890), 63 L. T. 392; *R. v. Crowe, Ex p. Selgome*, [1910] 2 K. B. 576. *Generally, Mentd. Grand Junction Canal Co. v. Dimes* (1850), 2 H. & Tw. 92; *R. v. Tooke* (1881), 48 J. P. 661.

D. The Return.

(a) In General.

651. *Is obligatory.*—*R. v. ARMIGER* (1662), 1 Keb. 272; 83 E. R. 940.

Annotation:—*Reid. Dodd's Case* (1858), 2 De G. & J. 510.

652. —. —. —. Upon a *habeas corpus*, the gaoler is bound to bring the body, although he has not his charges tendered him, but he may move the ct., & they will rule that he shall have his charges first.—*R. v. GREENWAY* (1681), 2 Show. 172; 89 E. R. 869.

Annotation:—*Reid. Re Dodd* (1858), 6 W. R. 537.

653. —. —. —. ANON. (1728), 1 Barn. K. B. 141; 94 E. R. 98.

654. —. —. —. An officer must obey a writ of *habeas corpus* though his fees are unpaid.—*HOPMAN v. BARRER* (1728), 2 Str. 814; 93 E. R. 806.

655. *Sufficiency of.*—*BOURN'S CASE* (1619), Cro. Jac. 543; Palm. 51, 96; 79 E. R. 465; *sub nom. BARNES' CASE*, 2 Roll. Rep. 157.

Annotations:—*Reid. R. v. Morgan* (1836), 7 C. & P. 642; *Watson's Case* (1829), 9 Ad. & El. 731. *Mentd. R. v. Broom* (1697), 12 Mod. Rep. 134; *Britton v. Cole* (1698), Comb. 469.

656. —. —. —. (1) A return to a *habeas corpus*, that the prisoner was committed to the custody of the gaoler, "safely to be kept in custody by virtue

of a certain order of the Ct. of Sessions at the Old Bailey, the tenor of which order is in the words following, viz., that B. is known to have exchanged broad money for clipped, therefore it is considered by the ct., that B. pay £1000 for a fine, & remain in the gaol of N. until, etc.," is informal, inasmuch as the warrant does not show that he was committed for the fine, yet, as upon the whole return there appears a good cause of commitment, it is sufficient.

(2) The Ct. of K. B. may bail a prisoner pending a debate whether the return to *habeas corpus* is sufficient.

(3) If commitment in execution by Ct. of Oyer & Terminer is wrong in form only, deft. will not be discharged on *habeas corpus*, but will be put to his writ of error. Commitment ought to be to the sheriff.

(4) If the return to a *habeas corpus* is insufficient, yet the Ct. of K. B. is not bound to bail a prisoner, if enough appears to show a good cause of commitment.—*R. v. BETHEL* (1695), 5 Mod. Rep. 19; *Holt, K. B.* 145; 87 E. R. 494; *sub nom. BETHELL'S CASE*, 1 Salk. 348; *sub nom. R. v. BITHELL*, 1 Ld. Raym. 47.

Annotations:—*As to* (3) *Distd. Re Hammond* (1846), 9 Q. B. 92. *Generally, Reid. R. v. Nathan* (1730), Sess. Cas. K. B. 95; *R. v. Mount* (1875), L. R. 6 P. C. 283.

657. —. —. —. The ct. is bound to look at the substance of the return; if it contains sufficient matter in substance to show that the prisoner is lawfully detained, we cannot discharge him upon *habeas corpus*, though the return in some respects be informal or should go into matter not essential to the question (LORD ABINGER, C.B.).—*R. v. ALVES* (1839), 8 L. J. Ex. 229.

658. —. —. —. A return to a *habeas corpus* for the discharge of an apprentice above the age of twenty-one, stating the custom of London, that every citizen & freeman of the city may take as an apprentice any person above the age of fourteen & under twenty-one, to serve for seven years & more, must show that the apprentice was within those ages when he bound himself apprentice, for the ct. will not intend that from matter *dehors* the return.—*Ex p. EDEN* (1813), 2 M. & S. 226; 105 E. R. 366.

659. —. —. —. Where the return to a *habeas corpus* stated that an English seaman being found on board a ship liable to forfeiture under 45 Geo. 3, c. 121, s. 1, was carried before a magistrate, & upon due proof, as by the statute in that case made & provided was required, was committed:—*Held*: this was insufficient, as it was necessary to state distinctly what proof was given, in order that the ct. might see whether it was the due proof required by s. 7 of the Act.—*NASH'S CASE* (1821), 4 B. & Ald. 295; 106 E. R. 916.

Annotations:—*Reid. R. v. Tivnan* (1864), 10 L. T. 499; *R. v. Mount* (1875), L. R. 6 P. C. 283. *Mentd. Re Baines* (1840), Cr. & Ph. 31.

corpus as having been improvidently issued may be entertained in the absence of prisoner.—*Re SPROULE* (1886), 12 S. C. R. 140.—CAN.

j. —. —. —. *Suppression or omission of material fact.*—Where an order is obtained *ex p.*, for a writ of *habeas corpus*, granted through the suppression or omission of a material fact, it will, on application, be reversed.—*Re BHAGWAN SINGH* (1914), 19 B. C. R. 97.—CAN.

PART V. SECT. 1, SUB-SECT. 4.—D. (a).

k. *Sufficiency of.*—*Drawn up on paper.*—A return to a writ of *habeas corpus* may be drawn up on paper, & need not be on parchment.—*Re ROWLEY* (1877), 3 V. L. R. 8.—AUS.

l. —. —. —. *Written by sheriff or under his dictation.*—Not signed by him.—If actually written by him or under his dictation, the return to a writ of *habeas corpus* need not be signed by the sheriff.—*Re SPROULE* (1886), 12 S. C. R. 140.—CAN.

m. —. —. —. *General reference to section of statute.*—Where the section of a statute contains a number of clauses prohibiting different acts, it is not a good return to a writ of *habeas corpus* to refer generally to the section.—*Re NARAIN SINGH* (1913), 18 B. C. R. 506.—CAN.

n. —. —. —. *Whether necessary to set forth specially jurisdiction of committing court.*—*Re BOMBAY J.J.* (1829), 1 Knapp, 1; 12 E. R. 222.—IND.

o. —. —. —. *Must be conclusive.*—*Re*

OMRITOLALL DEY (1875), I. L. R. 1 Cal. 78.—IND.

p. —. —. —. *Whether averment that commitment was written.*—*Ex p. HIGGINS* (1847), 9 I. L. R. 414.—IR.

q. —. —. —. *Invalid in law.*—*Evasive as to facts.*—A return is insufficient, when invalid in point of law, & evasive & unsatisfactory in point of fact.—*Re MATTHEWS* (1860), 12 I. C. L. R. 233; 5 Ir. Jur. 225.—IR.

r. *Assumption that return will be sufficient.*—The ct. will not on motion for *habeas corpus* consider any arrangement between prisoner & the executive as to a special return on the writ but will assume that the officer having custody of prisoner will make a usual & proper return.—*Re MILLAR* (1860), 3 W. W. & A. B. 41.—AUS.

Sect. 1.—Ad subjiendum: Sub-sect. 4, D. (a), (b), (c) & (d) i. & ii.]

660. —.]—A commitment under 6 Geo. 4, c. 125, s. 7, for continuing in the charge or conduct of a vessel after a duly licensed pilot has offered to take charge thereof, is bad, if it omits to allege that the offer was made to deft., or in his presence or hearing, although it describes the offence in the language of that sect.

If such a commitment is returned, on a writ of *habeas corpus*, as the cause of detaining deft. in custody, the ct. will not intend that there is a good conviction, but that the commitment follows the conviction, & will order deft. to be discharged.

—*R. v. CHANEY* (1838), 6 Dowl. 281; 1 Will. Woll. & H. 54; 7 L. J. M. C. 65; *sub nom. Re CHANEY*, 2 Jur. 80.

Annotations:—Consd. Re Timson (1870), L. R. 5 Exch. 257. *Reid. Re Peerless* (1841), 10 L. J. M. C. 67; *Re Cavanagh* (1842), 6 Jur. 220; *Ex p. Fletcher* (1843), 8 Jur. 146; *R. v. King* (1843), 13 L. J. M. C. 43; *Re Reynolds* (1844), 1 New Sess. Cas. 51. *Mentd. Chaney v. Payne* (1841), 1 Q. B. 712; *Charter v. Greame* (1849), 13 Q. B. 216.

— *Statement of grounds of commitment.*—

See Sub-sect. 4, D. (d), ii., post.

661. — *Liability for insufficiency.—Attachment.*—*ANON.* (1700), 1 Salk. 350; 91 E. R. 307.

662. — — — —.]—*R. v. WINTON*, No. 750, *post.*

663. — — — — *Officer making return liable.*—*DUNN v. ALEXANDER* (1814), 2 L. T. O. S. 454, L. C.

664. *Limitation of inquiry into.*—(1) The writ of *habeas corpus* is now the most usual remedy by which a man is restored again to his liberty, if he has been against law deprived of it & therefore the writ commands the day, & the cause of the caption & detaining of the prisoner to be certified upon the return, which if not done, the ct. cannot possibly judge whether the cause of the commitment & detainer is according to law, or against it. The cause of the imprisonment ought, by the return, to appear as specifically & certainly to the judges of the return, as it did appear to the ct. or person authorised to commit; else the return is insufficient.

(2) A *habeas corpus* may be had out of the K. B. or Ch., though there be no privilege, etc., or in the Ct. of C. P., or Exch. for any officer or privileged person there, upon which writ the gaoler must return by whom he was committed, & the cause of his imprisonment.

(3) A *certiorari* & a *habeas corpus* are in the nature of a writ of error. A *habeas corpus* & *certiorari* is a writ of right, the highest writ the party can bring (*HALE, C.J.*).

(4) The prisoner is to be discharged or remanded barely upon the return, & nothing else.—*BUSHELL'S CASE* (1670), *Vaugh.* 135; *Freem. K. B.* 1; 1 *Mod. Rep.* 119; *T. Jo.* 13; 124 E. R. 1006; *sub nom. R. v. BUSHELL*, 6 State Tr. 999.

Annotations:—As to (1) Consd. Bethell's Case (1694), 1 Salk. 348; *Crowley's Case* (1818), 2 Swan. 1; *Reid. Re Hammond* (1846), 15 L. J. M. C. 136; *Ex p. Fernandez* (1861), 10 C. B. N. S. 3. *As to (2) Consd. Crowley's Case* (1818), 2 Swan. 1. *Reid. Middlesex Sheriffs' Case* (1840), 11 Ad. & El. 273. *As to (3) Reid. Stockdale v. Hansard* (1840), 3 State Tr. N. S. 723. *As to (4) Reid. Wood's Case* (1771), 2 Wm. Bl. 745. *Generally, Reid. R. v. Chandler* (1698), 1 Ld. Raym. 545; *R. v. Evans* (1840), 9 L. J. Q. B. 82; *Ex p. Newton* (1849), 13 Jur. 606. *Mentd. Gwinne v. Poole* (1692), 2 Lut. App. 1560; *Grenville v. College of Physicians* (1700), 12 *Mod. Rep.* 386; *R. v. Wyndham* (1716), 1 Stra. 2; *R. v. Cambridge University* (1723), 8 *Mod. Rep.* 148; *Smith d. Dormer v. Parkhurst* (1738), *Andr.* 315; *Miller v. Seare* (1777), 2 Wm. Bl. 1141; *R. v. Shipley* (1784), 4 Doug. K. B. 73; *Burdett v. Abbot* (1811), 14 East, 1; *Watson v. Bodell* (1845), 14 M. & W. 57; *Ex p. Pater* (1864), 5 B. & S. 299; *R. v. McMahon* (1875),

13 Cox, C. C. 275; *Asprey v. Jones* (1884), 48 J. P. 613 *Scott v. Scott* (1912), 107 L. T. 211.

665. —.]—*Ex p. GILL*, No. 563, *ante.*

666. —.]—(1) The Lord Chancellor can issue the writ of *habeas corpus* at common law in vacation.

(2) In deciding the validity of a commitment by comrs. of bkpt. the ct. cannot travel out of the return.

(3) The writ of *habeas corpus* is a very high prerogative writ, by which the King has a right to inquire the causes for which any of his subjects are deprived of their liberty, a liberty most specially regarded & protected by the common law of this country (*LORD ELDON, C.*)—*CROWLEY'S CASE* (1818), 2 Swan. 1; *Buck*, 264; 36 E. R. 514, L. C. *Annotations:—As to (2) Reid. Re Leak* (1829), 3 Y. & J. 46; *Ex p. Bardwell* (1834), *Coop. temp. Brough.* 440. *As to (3) Reid. Re Belson* (1850), 7 Moo. P. C. C. 114. *Generally, Reid. Watson's Case* (1839), 9 Ad. & El. 731; *Re Martin* (1847), 16 L. J. Boy. 8.

667. —.]—*Re COBBETT*, No. 607, *ante.*

668. *Writ directed to Corporation of London.—Return made by sheriffs only.*—A writ of *habeas corpus* was directed to the Mayor, Aldermen & Sheriffs of London & "eorum cuilibet" in the usual form, to remove A. from the Compter to the Fleet:—*Held: the return by the sheriffs only was good.*—*WYNNE v. BOUGHEY* (1666), O'Bridg. 570; 124 E. R. 750.

Validity of warrant of commitment.—*See CRIMINAL LAW & PROCEDURE; MAGISTRATES.*

Commitment under writ de contumace capiendo.—*See ECCLESIASTICAL LAW.*

Commitment by Parliament.—*See PARLIAMENT.*
In respect of lunatics.—*See LUNATICS & PERSONS OF UNSOUND MIND.*

(b) *Time for.*

See C. O. R., r. 213.

669. *Immediately.*—A writ of *habeas corpus ad subjiendum* was issued to the sheriff of C., returnable immediately before a judge of the K. B.—*R. v. GARDNER* (1728), *Tremaine's Pleas of the Crown*, 354.

670. —.]—*R. v. STRUDWICK* (1730), 1 Barn. K. B. 402; 94 E. R. 271.

671. —.]—*R. v. WRIGHT* (1731), 2 Stra. 915; 93 E. R. 939; *sub nom. ANON.*, 2 Barn. K. B. 35.

672. *Not before day specified.*—*ARCHER'S CASE* (1701), *Fortes. Rep.* 196; 1 Ld. Raym. 673; 92 E. R. 816.

673. —.]—Where a prisoner was brought up before the return of the *habeas corpus*:—*Held: the ct. would not receive him.*—*DAY'S CASE* (1734), *Cooke, Pr. Cas.* 108; 125 E. R. 989.

674. —.]—*COATES'S CASE* (1742), *Barnes*, 385; 94 E. R. 967.

Annotation:—Consd. Hodgson v. Temple (1814), 5 Taunt. 503.

675. —.]—The ct. will not receive the return of a *habeas corpus* till the return day.—*MASH'S CASE* (1772), 2 Wm. Bl. 805; 96 E. R. 473.

Annotation:—Reid. R. v. Bessé (1811), 4 L. T. O. S. 93.

676. *Not day after service.*—The ct. refused an attachment against the serjeant-at-arms, for a contempt in not making a return to a writ of *habeas corpus* served upon him the preceding day.—*STOCKDALE v. HANSARD* (1840), 8 Dowl. 474; 3 State Tr. N. S. 1242, n.; *subsequent proceedings, sub nom. MIDDLESEX SHERIFF'S CASE*, 11 Ad. & El. 273.

677. *When writ issued in vacation.*—*R. v. CLARKE* (1758), 1 Burr. 606; 97 E. R. 471.

Annotations:—Reid. Canadian Prisoners' Case (1839), 3 State Tr. N. S. 963; *Carus Wilson's Case* (1845), 7 Q. B. 984.

PART V. SECT. 1, SUB-SECT. 4.—D. (b).

677 L. *When writ issued in vacation.*—A writ issued in vacation may be returnable in term as well as immediately.—*Re SPROULE* (1886), 12 S. C. R. 140.—*CAN.*

678. —.]—*R. v. MEAD*, No. 580, *ante*.

679. —.]—*R. v. SHEBBEARE*, No. 578, *ante*.

680. *May be enlarged.*—Where a *habeas corpus* was returnable on a Sunday deft. was committed the next day.

A *habeas corpus* was sued out to bring deft. into ct. returnable in one month after a certain date, which was on a Sunday:—*Held*: deft. might be brought up within four days after the return.—*HEWIT v. POWELL* (1734), Cooke, Pr. Cas. 108; Barnes, 221; 125 E. R. 989.

681. —.]—*R. v. CLARKE* (1762), 3 Burr. 1362; 97 E. R. 875.

Annotation:—*Consd. R. v. Brixton Prison, Ex p. Servini*, [1914] 1 K. B. 77.

682. —.]—*BARNARDO v. FORD*, GOSSAGE'S CASE, No. 469, *ante*.

(c) Filing.

See C. O. R., r. 214.

683. *Necessity for.*—*CROFTON'S CASE* (1662), 1 Sid. 78; 82 E. R. 980; *sub nom. R. v. CROFTON*, 1 Keb. 305.

Annotation:—*Mentd. R. v. Wyndham* (1716), 1 Stra. 2.

684. *Not in vacation.*—*JENKES'S CASE* (1676), cited 2 Swan. at pp. 12, 43; 6 State Tr. 1190; 36 E. R. 518, 524.

Annotations:—*Consd. Crowley's Case* (1818), 2 Swan. 1; *Canadian Prisoners' Case* (1839), 3 State Tr. N. S. 963.

685. *To controvert custom—On which return grounded—Procedendo after filing.*—On a return to a *habeas corpus*, grounded on a custom of London, the ct. will first order the return to be filed for the purpose of controverting the custom in an action for a false return. A *procedendo* may be granted to the Mayor's Ct. of London after the return to a *habeas corpus* has been filed in the superior ct., although the usual practice is to award the *procedendo* without filing the writ.—*FAZAKERLY v. BALDOE* (1704), 8 Mod. Rep. 177; 1 Salk. 352; Holt, K. B. 335; 87 E. R. 932.

Annotation:—*Refd. Shergold v. Bostwick* (1728), 1 Barn. K. B. 142.

Amendment of return—Before or after filing.—See No. 585, *ante*, Nos. 707, 731, 732, *post*.

(d) Contents of.

i. Formal Documents relating to Custody.

See C. O. R., r. 222.

686. *General rule.*—*WATSON'S CASE*, No. 585, *ante*.

687. *The warrant—Only where relating to custody in dispute.*—(1) A party brought up on a writ of *habeas corpus* is not entitled to be discharged, if he be not in the custody of the officer to whom the writ is directed, for the cause stated on making the application to the ct.

(2) A bkpt. detained in the Fleet prison in several actions, not answering to the satisfaction of the comrs. certain questions which they had put to him, they issued their warrant, addressed "to the keeper of Newgate, or whom else it might concern," authorising the detention of bkpt. until

he should make answer to their satisfaction. This warrant was delivered to the warden of the Fleet. To a writ of *habeas corpus* issued at the instance of the prisoner, the warden returned that he held him by virtue of the detainers in the civil suits, & added that, on a certain day, the above warrant was left with him:—*Held*: the warrant not being a cause of the prisoner's detainer in the Fleet, it was not necessary to set it forth in the return, & under the circumstances, the ct. could not inquire into the validity of the warrant.

(3) On the return to a *habeas corpus* being read, the proper course is for prisoner's counsel to begin & show the grounds upon which he claims to be entitled to his discharge from custody.—*Ex p. GARCIA* (1836), 3 Bing. N. C. 209; 5 Dowl. 352; 2 Hodg. 278; 3 Scott, 602; 6 L. J. C. P. 11; 132 E. R. 425.

Annotation:—*As to* (2) *Refd. Ex p. Knight* (1836), 6 L. J. Ex. 13.

ii. Grounds of Commitment.

See C. O. R., r. 222.

688. *Must be stated.*—Upon a *habeas corpus* the warden of the Fleet returned that H. was committed to prison by the commandment of the comrs. in causes ecclesiastical:—*Held*: the return ought to certify the cause of the commitment, for the ct. to examine if it was sufficient or not.—*HINDE'S CASE* (1577), 4 Leon. 21; 74 E. R. 701.

689. —.]—A *habeas corpus* was directed to the steward & marshal of the M., for one H., who made return, that H. was committed to his custody, *per mandatum W., militis principalis secretari, et unius de privato concilio dominæ reginæ*:—*Held*: the return was insufficient, because the cause upon which he was committed, was not set down in the return.—*HOWEL'S CASE* (1587), 1 Leon. 70; 74 E. R. 66.

690. —.]—To be good a return to a writ of *habeas corpus* must show the cause of the commitment.—*CODD v. TURBACK* (1615), 3 Bulst. 109; 81 E. R. 94.

691. —.]—The return to a *habeas corpus* must show the cause of commitment.—*LAWSON'S CASE* (1638), Cro. Car. 507; 79 E. R. 1038.

692. —.]—*BUSHELL'S CASE*, No. 664, *ante*.

693. — *Unless matters of State.*—D. & others, having been imprisoned by virtue of warrants signed by the A.-G., obtained writs of *habeas corpus cum causâ*. The returns stated that the prisoners were detained by the King's special commandment:—*Held*: a sufficient return.

Whether the commitment be by the King or others this ct. is a place where the King doth sit in person, & we have power to examine it, & if it appears that any man hath injury or wrong by his imprisonment, we have power to deliver & discharge him; if otherwise he is to be remanded by us to prison (HYDE, L.C.J.).—*DARNEL'S CASE* (1627), 3 State Tr. 1.

Annotations:—*Refd. R. v. Halliday*, [1917] A. C. 260. *Mentd. Burdett v. Abbot* (1811), 14 East, 1.

690 i. *May be enlarged—New writs unnecessary.*—Writs of *habeas corpus* were made returnable forthwith. The prisoners were brought into ct. on Tuesday, & the matter directed to be argued on the following Saturday. The same day the sheriff took the prisoners back to gaol:—*Held*: the ct. could direct the sheriff to bring in the bodies of the prisoners on the day set for the argument, without directing new writs to issue.—*R. v. TOWER* (1880), 20 N. B. R. 478.—CAN.

690 ii. —.]—A return was made to a writ of *habeas corpus*, & the body

of M. was brought into ct. Upon reading a medical certificate that M. was insane, & upon the undertaking of his relatives to obtain a commission of lunacy, the judge enlarged the time for making the return.—*Re CODEX* (1853), 5 Ir. Jur. 175.—IR.

PART V. SECT. 1, SUB-SECT. 4.—D. (a).

a. *Not until read before judge.*—A return to a writ of *habeas corpus* cannot be filed until it has been read before the judge.—*R. v. RENO* (1868), 4 P. R. 281.—CAN.

PART V. SECT. 1, SUB-SECT. 4.—D. (d) i.

i. *The warrant.*—Whenever a written warrant is necessary, it must be set forth in the return to a *habeas corpus*.—*R. v. MOUNTNORMIS (EARL)* (1795), Ridg. L. & S. 460.—IR.

a. — *Copy sufficient—Original not necessary.*—*Re ROSS* (1864), 3 P. R. 301.—CAN.

PART V. SECT. 1, SUB-SECT. 4.—D. (d) ii.

688 i. *Must be stated.*—*Re BERRY* (1865), 7 Ir. Jur. 164.—IR.

Sect. 1.—*Ad subjiendum*: Sub-sect. 4, D. (d) ii. & iii., (e) & (f) i. & ii.]

694. — Unless prisoner previously discharged.] — R. v. SPENCER (1778), 1 Gude's Crown Practice, 278.

695. Sufficiency of statement—When insufficient in form.]—CHANCEY'S CASE (1611), 12 Co. Rep. 82; 2 Brownl. 18; 77 E. R. 1300.

Annotations:—*Refd.* Bushell's Case (1670), 6 State Tr. 999; Watson's Case (1839), 9 Ad. & El. 731. *Mentd.* High Commission Case (1612), 12 Co. Rep. 84; Townsend v. Hughes (1678), 1 Mod. Rep. 232.

696. — Before & after conviction.] — R. v. HAWKINS (1716), Fortes. Rep. 272; 92 E. R. 849.

Annotations:—*Appl.* R. v. Taylor (1826), 7 Dow. & Ry. K. B. 622; R. v. Lewes Prison, *Ex p.* Doyle, [1917] 2 K. B. 254. *Refd.* Souden's Case (1821), 4 B. & Ald. 294.

697. — Commitment for contempt.]—Where on a return to a writ of *habeas corpus*, it appeared that the prisoner had been committed by the High Commission Ct. for using divers contemptuous words touching their proceedings:—*Held*: the return was bad, for it did not show what the words were.—HODD v. HIGH COMMISSION COURT (1615), 3 Bulst. 146; 81 E. R. 125.

698. — Stolen goods.] — HAWKERIDGE'S CASE (1616), 12 Co. Rep. 129; 77 E. R. 1404; *sub nom.* R. v. HAWKERIDGE, 1 Roll. Rep. 378.

699. — Defendant in custody under sentence of court of competent jurisdiction—Particular circumstances to warrant sentence not set out.]—*Semle*: it is a sufficient return to a *habeas corpus* that deft. is in custody under the sentence of a ct. of competent jurisdiction to inquire of the offence, & to pass such a sentence, without setting forth the particular circumstances necessary to warrant such a sentence.—R. v. SUDDIS (1801), 1 East, 306; 102 E. R. 119.

Annotation:—*Refd.* Watson's Case (1839), 9 Ad. & El. 731.

700. —.]—A return to *habeas corpus* stated that a vessel, with smuggled goods on board, was found at the fish market, within the limits of the town of R.:—*Held*: the *corpus delicti* was not sufficiently stated, as it was quite consistent with the return that the vessel might be in the fish market in the town of R., but drawn up on the land, which would not clearly be a case within 24 Geo. 3, Scss. 2, c. 47, s. 1.—SOUDEN'S CASE (1821), 4 B. & Ald. 294; 106 E. R. 945.

Annotation:—*Refd.* R. v. Mount (1875), L. R. 6 P. C. 283.

701. —.]—A return to a *habeas corpus* stated that prisoner was found on board a vessel, discovered within eight leagues of that part of the coast of Great Britain, called Suffolk, to wit, within eight leagues of O., in that county:—*Held*: it was not to be averred with sufficient certainty that the vessel was not within four leagues of the coast of Great Britain, between the North Foreland in Kent, & Beachy Head in Sussex.—DRYBEL'S CASE (1821), 4 B. & Ald. 243; 106 E. R. 926.

Annotations:—*Distd.* *Re* Baines (1840), Cr. & Ph. 31. *Refd.* R. v. Mount (1875), L. R. 6 P. C. 283.

Amendment of insufficient return, *see* Sub-sect. 4, D. (g), *post*.

iii. Other Matters.

702. Court will not give directions as to.]—Upon

b. Sufficiency of statement—Commitment for re-examination of prisoners on a charge of murder.]—Persons detained without any warrant of commitment on a charge of murder were brought up by a writ of *habeas corpus*; the return set out that the cause of detainer was a commitment for re-examination on a charge of murder against the prisoners:—*Held*: such return disclosed a legal cause of

imprisonment.—*Ex p.* DAWSON (1861), 4 Nfld. L. R. 622.—NFLD.

PART V. SECT. 1, SUB-SECT. 4.—D. (d) iii.

706 i. Authority of person committing.]—A return to a *habeas corpus* ought to show that prisoner was committed by some person having authority to commit.—R. v. MOUNTNOBIS (EARL)

a return to a *habeas corpus*, the court will not give any direction or advice to the gaoler, as to the matter of which his return should consist.—*Re* FLETCHER (1843), 1 Dow. & L. 726; 13 L. J. M. C. 16; 8 J. P. 168; 8 Jur. 140.

Annotations:—*Mentd.* R. v. Reynolds & Hodgson (1844), 13 L. J. M. C. 65; Fletcher v. Calthrop (1845), 1 New Scss. Cas. 529; R. v. Bidwell (1847), 2 Car. & Kir. 564; Bowdler's Case (1848), 12 Q. B. 612; Henderson v. Preston (1888), 21 Q. B. D. 362.

703. Taking into custody—Date of.] — HUTCHINS v. PLAYER (1663), O'Bridg. 272; 124 E. R. 585.

Annotations:—*Mentd.* R. v. Batcheldor (1839), 1 Per. & Dav. 516; Truscott v. Merchant Tailors' Co. (1856), 11 Exch. 855.

704. —.]—BUSHELL'S CASE, No. 664, ante.

705. — & detention.]—The return to a *habeas corpus* must answer the taking, as well as the detaining.

The ct. gave leave to amend the return, which was done in ct.—WARMAN'S CASE (1778), 2 Wm. Bl. 1204; 96 E. R. 709.

706. Authority of person committing.]—A justice need not mention in a warrant of commitment that he is a justice; but it must appear that he is one on the return to a *habeas corpus*.—ELDERTON'S CASE (1703), 2 Ld. Raym. 978; 6 Mod. Rep. 73; Holt, K. B. 590; 92 E. R. 152.

Annotations:—*Refd.* R. v. Talbot (1730), 11 Mod. Rep. 415; R. v. Goodall (1754), Say. 129. *Mentd.* Anon. (1705), 2 Salk. 546; Winter v. Miles (1809), 10 East, 578; A.-G. v. Dakin (1870), L. R. 4 H. L. 338.

707. —.]—(1) The return to a *habeas corpus*, stated that a prisoner was committed upon the following order, & then set out an order purporting to be made by the Master of the Rolls:—*Held*: it was insufficient, as not directly averring by whom the order was made.

(2) The order stated that the prisoner was brought to the bar of the Ct. of Ch. & committed for contempt. The ct. would not allow the prisoner to use affidavits to show that he had not been brought to the bar of the ct.

There is no case in which a party has been allowed to contradict facts set forth in an order (PARTE-SON, J.).

(3) The ct. will allow the return to a *habeas corpus ad subjiendum* to be amended even after it is filed.—*Re* CLARKE (1842), 2 Q. B. 619; 2 Gal. & Dav. 780; 11 L. J. Q. B. 75; 6 Jur. 757; 114 E. R. 243.

Annotations:—*As to* (1) *Refd.* Bowdler's Case (1848), 12 Q. B. 612; *Re* Dimes (1850), 19 L. J. Q. B. 168. *As to* (2) *Refd.* Carus Wilson's Case (1845), 7 Q. B. 984. *Generally, Mentd.* Watson v. Bodell (1845), 14 L. J. Ex. 281; *Re* Crawford (1849), 13 Jur. 955.

(e) Evidence in Support.

708. Whether necessary—In first instance.]—WATSON'S CASE, No. 585, ante.

709. — Ambiguous return.]—If a return, which on the face of it is ambiguous, is not fortified by affidavit, clearing up all doubt, it will be held evasive & bad.—R. v. ROBERTS (1860), 2 F. & F. 272.

Annotation:—*Mentd.* *Re* Tye & Ward (1889), 5 T. L. R. 407.

(1795), Ridg. L. & S. 460.—IR.

PART V. SECT. 1, SUB-SECT. 4.—D. (e).

c. Second return admissible.]—A second return subsequently to the issue of the writ can be looked at in support of prisoner's detention.—R. v. WALTON (1905), 11 O. L. R. 94.—CAN.

(f) Evidence to controvert.

i. Matters of Fact.

See Habeas Corpus Act, 1816 (c. 100).

710. In criminal cases—General rule.]—R. v. ROGERS, No. 746, post.**711. ———.]—On habeas corpus, bringing up a party committed by justices for not finding sureties of the peace, the ct. will not hear affidavits controverting the facts alleged in the articles of the peace.—R. v. DUNN (1840), 12 Ad. & El. 599; Arn. & H. 21; 4 Per. & Dav. 415; 4 J. P. 728; 113 E. R. 939; sub nom. *Re DUNN*, 10 L. J. M. C. 29; 5 Jur. 721.****Annotations:—***Reid*. Steward v. Gromett (1859), 7 C. B. N. S. 191. *Mentd.* *Ex p.* Gifford (1845), 1 New Sess. Cas. 490; R. v. Mallinson (1851), 16 Q. B. 367; Lort v. Hutton (1876), 45 L. J. M. C. 95.**712. ———.]—(1) On motion to discharge a party brought up by a writ of habeas corpus, affidavits suggesting matters which, though not repugnant to the return, show the custody to be illegal, are not admissible.****(2) A party discharged by a writ of habeas corpus from an illegal custody on one criminal charge, is not privileged *redeundo* from an arrest under criminal process upon another & different criminal charge, where there is no ground for supposing that the former process had been originated for the purpose of procuring the arrest under the latter.****(3) A writ of habeas corpus may be directed to several persons.—Re DOUGLAS (1842), 3 Q. B. 825; 3 Gal. & Dav. 509; 12 L. J. Q. B. 49; 114 E. R. 724; sub nom. R. v. DOUGLAS, 7 Jur. 39.****713. ———.]—R. v. STANHOPE (1825), 12 Ad. & El. 620, n.; 113 E. R. 949.****Annotations:—***Consd.* R. v. Mallinson (1851), 16 Q. B. 367. *Reid*. R. v. Dunn (1840), Arn. & H. 21; Steward v. Gromett (1859), 7 C. B. N. S. 191. *Mentd.* Lort v. Hutton (1876), 33 L. T. 730.**714. In non-criminal cases—By plea.]—DE VINE'S CASE (1456), cited O. Bridg. at pp. 288, 305; 124 E. R. 594, 603.****Annotations:—***Consd.* Hutchins v. Player (1663), O. Bridg. 272. *Reid*. Milford v. Hughes (1846), 10 Jur. 990.**715. — By affidavit.]—Where a prisoner is brought up under a habeas corpus issued at common law, he may controvert the truth of the return by affidavits, by virtue of Habeas Corpus Act, 1816 (c. 100), s. 4.—*Ex p.* BEECHING (1825), 4 B. & C. 136; 6 Dow. & Ry. K. B. 209; 3 Dow. & Ry. M. C. 174; 107 E. R. 1010.****Annotations:—***Mentd.* Canadian Prisoners' Case (1830), 3 State Tr. N. S. 963.**716. ———.]—Re WALMINGTON (1846), 6 L. T. O. S. 315.****717. ———.]—Facts not appearing upon return.]****—Upon return to a habeas corpus to bring up a bkpt. detained under a warrant of commitment for not answering satisfactorily the questions put to him by a subdivision ct. under 1 & 2 Will. 4, c. 50, affidavits of facts which do not appear upon the face of the return may be made use of by bkpt.—*Re MARTIN* (1847), 4 Dow. & L. 768; 2 Saund. & C. 33; 16 L. J. Q. B. 286; 9 L. T. O. S. 107; 11 Jur. 369.****718. ———.]—(1) Where a return to a habeas corpus states that a prisoner is detained under civil process, it is competent to him to show, by affidavit, that he was originally arrested on a Sunday.****(2) A rule nisi can be made in vacation, without consent, in order to avoid the necessity of bringing up the party.—*Re EGGINGTON* (1853), 2 E. & B. 717; 23 L. J. M. C. 41; 22 L. T. O. S. 77, 118;****18 J. P. 165; 18 Jur. 224; 2 C. L. R. 385; 118 E. R. 936; sub nom. R. v. EGGINGTON, 2 W. R. 10.****Annotations:—***As to* (1) *Reid*. Swan v. Dakins (1855), 16 C. B. 77; Jones v. Howell (1859), 29 L. J. Ex. 19. *Generally, Mentd.* Hooper v. Lane (1857), 6 H. L. Cas. 443; Bateman v. Freston (1861), 3 E. & R. 578; *Ex p.* Freston (1861), 3 De G. F. & J. 612; R. v. Whitecross St. Prison (1865), 6 B. & S. 371; Bancroft v. Mitchell (1867), 8 B. & S. 558.**719. ———.]—SWAN v. DAKINS, No. 530, ante.****720. Not facts within jurisdiction of court—Contempt of Parliament.]—To a habeas corpus ad subjiciendum, etc., it was returned by the Serjeant-at-Arms of the House of Commons that he detained the prisoners on a warrant, directed to him by the Speaker, requiring him to take into custody E. & W. for having been guilty of a contempt & breach of the privileges of the House:—*Held*: the ct. could not inquire by affidavit into the merits of the commitment, even if the case were within Habeas Corpus Act, 1816 (c. 100), although, in affidavits on which the habeas corpus issued, it was sworn that the parties were in fact committed for executing process in obedience to rules of this ct.—MIDDLESEX SHERIFF'S CASE (1840), 11 Ad. & El. 273; 3 State Tr. N. S. 1239; 113 E. R. 419; sub nom. STOCKDALE v. HANSARD, 3 Per. & Dav. 349; 4 Jur. 70; sub nom. R. v. EVANS & WHEELTON, 8 Dowl. 451; 9 L. J. Q. B. 82.****Annotations:—***Reid*. Howard v. Gosset (1845), 10 Q. B. 359; *Re Dimes* (1850), 14 Q. B. 554; Swan v. Dakins (1855), 16 C. B. 77; Fenton v. Hampton (1858), 11 Moo. P. C. C. 347; Fielding v. Thomas, [1896] A. C. 600. *Mentd.* Levy v. Moylan (1850), 10 C. B. 189; *Re Fernandez* (1861), 6 H. & N. 717; *Ex p.* Fernandez (1861), 10 C. B. N. S. 3; Dill v. Murphy (1864), 1 Moo. P. C. C. N. S. 487; Bradlaugh v. Erskine (1883), 31 W. R. 365.**721. — Contempt of court.]—Re CLARKE, No. 707, ante.****722. ———.]—CARUS WILSON'S CASE, No. 650, ante.****723. ———.]—A return to a habeas corpus stated that the prisoner was detained by an order of the Vice-Chancellor committing him for a contempt incurred by breach of an injunction issued in a cause in Ch.:—*Held*: affidavits for the purpose of showing that the Lord Chancellor, by whom the order for the injunction was made, was an interested party, were inadmissible, as the return stated a commitment by a ct. of competent jurisdiction.—*Re DIMES* (1850), 14 Q. B. 554; 4 New Mag. Cas. 69; 19 L. J. Q. B. 158; 14 L. T. O. S. 372; 14 J. P. 54; 14 Jur. 198; 117 E. R. 214; subsequent proceedings, 3 Mac. & G. 4, L. C.**

ii. Matters of Jurisdiction.

724. To show want of jurisdiction—To impose particular sentence.]—CARUS WILSON'S CASE, No. 650, ante.**725. ———.]—The return to a habeas corpus commanding the governor of M. prison to bring up two prisoners detained in the prison, stated that they had been convicted, in the Royal Ct. of Jersey, & had been sentenced by that ct. to be transported to such place as the Queen in council should appoint, that the ct. of Jersey was a ct. of competent criminal jurisdiction to try & punish the offence:—*Held*: affidavits could not be used to show that the ct. of Jersey had no jurisdiction to transport.—BRENAN & GALEN'S CASE (1847), 10 Q. B. 492; 116 E. R. 188; sub nom. *Re BRENAN & GALLAN*, 2 Cox, C. C. 193; 9 L. T. O. S. 147; 11**

PART V. SECT. 1, SUB-SECT. 4.—D. (f) i.

710 i. In criminal cases.]—The truth of the return to a writ of habeas corpus may be impeached & inquired into under Habeas Corpus Act, 1816.—*Ex p.* WEST (1861), 3 Legge, 1475.—AUS.

Sect. 1.—*Ad subjiciendum*: Sub-sect. 4, D. (f) ii., (g), (h) & (i) & E.]

Jur. 775; *sub nom.* R. v. BRENNAN & GALLAN, 16 L. J. Q. B. 289; 11 J. P. 727.

Annotation:—*Reid. Re Crawford* (1849), 13 Q. B. 613.

726. ———— [To deal with offence.]—*Re BAILEY, Re COLLIER*, No. 557, *ante*.

727. ———— [—]—*Re BAKER*, No. 558, *ante*.

728. ———— [—]—*Re SMITH*, No. 742, *post*.

729. ———— [—]—(1) A prisoner had been convicted by justices under 9 Geo. 4, c. 31, & Criminal Procedure Act, 1853 (c. 30), of an aggravated assault, upon the information & complaint of a woman charging that he did unlawfully assault & abuse her. It appeared, on affidavits, that upon the evidence the charge was one of rape. Upon a rule nisi for a *habeas corpus*:—*Held*: (POLLOCK, C.B., & WILDE, B.) inasmuch as the charge was not of a common assault & the evidence did not point to a common assault, but to a rape or an attempt to commit rape, the justices had no jurisdiction; (BRAMWELL, B., & CHANNELL, B.) the information charged an assault, & as it was possible that the justices might have disbelieved the charge of rape, or attempt to commit rape, & found that nothing more took place except an assault of an aggravated character, the rule ought not to be made absolute.

There is nothing before us that can enable us to say that the magistrates have exceeded their jurisdiction (CHANNELL, B.).

(2) The ct. granted a rule nisi for a *habeas corpus* to bring up a prisoner, access to whom was denied by the gaoler, on the application of the prisoner's father.—*Re THOMPSON* (1860), 6 H. & N. 193; 30 L. J. M. C. 19; 3 L. T. 294, 409; 25 J. P. 160; 7 Jur. N. S. 48; 9 W. R. 203; 158 E. R. 80.

Annotations:—As to (1) *Consd. Wilkinson v. Dutton* (1863), 32 L. J. M. C. 152. *Reid. R. v. Elrington* (1861), 1 B. & S. 688; *Wellcock v. Constantine* (1863), 32 L. J. Ex. 285; *Shepherd v. Postmaster General* (1864), 11 L. T. 369; *Re Dawson* (1878), 42 J. P. 456; *R. v. Miles* (1890), 24 Q. B. D. 423. *Generally, Mendt. Munday v. Maiden* (1875), 33 L. T. 377; *Crocker v. Raymond* (1886), 3 T. L. R. 181.

730. ———— [—]—*Re AUTHERS*, No. 559, *ante*.

(g) *Amendment*.

See C. O. R., r. 223.

731. Time for—Before filing—As to form or averment of fact.]—Defect in form, or averment in fact, in the return to *habeas corpus* may be amended before the return is filed.—ANON. (1673), 1 Mod. Rep. 103; 86 E. R. 765.

Annotations:—*Reid. Watson's Case* (1839), 9 Ad. & El. 731; *Re Clarke* (1842), 2 Q. B. 619.

732. ———— [After filing.]—Return of a *habeas corpus* is not amendable after it is filed.—*R. v. CATTERALL* (1731), Fitz-G. 266; 94 E. R. 750.

733. ———— [—]—*Re CLARKE*, No. 707, *ante*.

734. ———— [Or judgment.]—WATSON'S CASE, No. 585, *ante*.

PART V. SECT. 1, SUB-SECT. 4.— D. (i) ii.

726 i. To show want of jurisdiction—*To deal with offence.*—On motion for *habeas corpus* to discharge a prisoner from custody he may show by affidavit that the committing justices had no jurisdiction.—*Re CORNILLAC* (1862), 1 W. & W. 193.—AUS.

726 ii. ———— [—]—A judge cannot, upon the return to *habeas corpus* where a warrant shows jurisdiction, try on affidavit evidence the question where the alleged offence was committed.—*R. v. DEFRIES, R. v. TAMBLYN* (1894), 25 O. R. 645.—CAN.

726 iii. ———— [—]—An affidavit is admissible to show that the investigation & commitment took place on

Sunday.—*R. v. CAVALIER* (1896), 11 Man. L. R. 333.—CAN.

726 iv. ———— [—]—On motion to discharge a prisoner on reading the return to a writ of *habeas corpus* it is competent for the prisoner to show by affidavit that the committing justices had no jurisdiction.—*Ex p. RENNELL* (1879), O. B. & F. 72.—N.Z.

PART V. SECT. 1, SUB-SECT. 4.— D. (g).

732 i. Time for—Whether after filing.]—A return cannot be amended after it is filed.—*R. v. MOUNTNORRIS (EARL)* (1795), Ridg. L. & S. 460.—IR.

732 ii. ———— [—]—After the return has been filed, the ct. has power to

735. Leave to amend granted.]—HAWKERIDGE'S CASE (1616), 12 Co. Rep. 129; 77 E. R. 1404; *sub nom.* R. v. HAWKERIDGE, 1 Roll. Rep. 378.

736. ———— [—]—BRONKER'S CASE (1647), Sty. 16; 82 E. R. 495.

737. ———— [—]—WARMAN'S CASE, No. 705, *ante*.

737a. Ordered by court—Return insufficient.]—Upon reading the return of T. upon a *habeas corpus* directed to him, on the behalf of L. committed by order of both Houses of Parliament for his contempt of them, a motion was made for an *alias habeas corpus*, because T. had only returned the writ, but had not brought the body of the prisoner:—*Held*: the return must be amended.—TICHBORNE'S CASE (1648), Sty. 96; 82 E. R. 558.

738. ———— [Warrant imperfectly set forth in return.]—A bkpt., brought up by *habeas corpus*, is not to be discharged, because the return to the writ sets forth the warrant of committal imperfectly, & in such a case, the Lord Chancellor, before he enters upon the question of the validity of the committal, will ascertain whether the warrant is truly set forth in the return & if it is not so set forth, he will order the return to be amended.—*Re POWER & JACKSON* (1826), 2 Russ. 583; 38 E. R. 454, L. C.

Annotation:—*Consd. Re Clarke* (1842), 2 Q. B. 619.

739. ———— [Accidental omission of name.]—WATSON'S CASE, No. 585, *ante*.

740. Substitution of good for bad commitment.]—The return to a *habeas corpus* stated that prisoner was committed for three months by warrant of a justice, reciting a conviction by the justice, which was, on the face of it, bad. The return then stated that, a week after such commitment, prisoner being still in custody, the same justice delivered to the gaoler another warrant of commitment reciting, & grounded upon, a conviction of the same date as the first, by the same justice, setting forth the same offence, & imposing the same punishment. In this conviction no material defect appeared:—*Held*: the prisoner was not entitled to be discharged, the return showing a good warrant under which he was in custody.—*R. v. RICHARDS* (1844), 5 Q. B. 926; *Dav. & Mer.* 777; 114 E. R. 1497; *sub nom.* *Re RICHARDS*, 13 L. J. M. C. 147; 8 Jur. 752; *sub nom.* *Re WALKER*, 1 New Sess. Cas. 182; *sub nom.* *R. v. WALKER*, 1 New Mag. Cas. 14; 8 J. P. 534.

Annotations:—*Fold. Ex p. Cross* (1857), 2 H. & N. 354. *Reid. Bailey's Case* (1854), 3 E. & B. 607; *Re Baker* (1857), 2 H. & N. 219; *Re Terraz & Extradition Acts*, 1870 & 1873 (1878), 39 L. T. 502.

741. ———— [—]—*Ex p. Cross*, No. 522, *ante*.

742. ———— [—]—(1) A warrant of commitment being bad, a second warrant was allowed to be substituted for it as the return to a *habeas corpus*.

(2) Upon a return to a *habeas corpus* affidavits are not admissible to show that the offence was not committed within the jurisdiction of the justice.—

amend it.—*R. v. FEENEY* (1843), 5 I. L. R. 437.—IR.

735 i. Leave to amend granted.]—On a motion to discharge a prisoner on reading the return the ct. will allow the return to be amended.—*Ex p. RENNELL* (1879), O. B. & F. 72.—N.Z.

740 i. Substitution of good for bad commitment.]—Immediately before return a new commitment may be substituted for a previous one, & set forth in the return as a cause for detention.—*Re MCMURDER* (1907), 2 E. L. R. 436.—CAN.

740 ii. ———— [—]—*R. v. GRAF* (1909), 13 O. W. R. 1133; 19 O. L. R. 238; 15 Can. Crim. Cas. 193.—CAN.

Re SMITH (1858), 3 H. & N. 227; 157 E. R. 455; *sub nom. Ex p. SMITH*, 27 L. J. M. C. 186; 22 J. P. 450; 6 W. R. 440.

Annotation.—*Reid. Ex p. Phipps* (1863), 27 J. P. 503.

743. Where conviction not before court—& insufficiently stated in return.—Where a prisoner is brought up under a writ of *habeas corpus*, & the commitment is insufficient, & the conviction has not been brought before the ct. by *certiorari*, the ct. is not justified in looking at the conviction for the purpose of amending the commitment by it, nor in detaining the prisoner in custody until the conviction is brought up by *certiorari*.—*Re TIMSON* (1870), L. R. 5 Exch. 257; *sub nom. Ex p. TIMSON*, 39 L. J. M. C. 129; 18 W. R. 840.

Annotation.—*Reid. Clark v. R.* (1884), 14 Q. B. D. 92.

(h) *Making False Return.*

744. Punishment for—Indictment.—(1) An indictment lies for a false return to *habeas corpus*.

(2) A return to a *pluries habeas corpus* denying the detention at the time of or since the service of the *pluries* writ is bad, because it does not answer to the time of the coming of the first *habeas corpus*.—*VINER'S CASE* (1875), 1 Freem. K. B. 522; 89 E. R. 392; *sub nom. EMERTON'S CASE*, 1 Freem. K. B. 401; *sub nom. R. v. VINER*, 2 Lev. 128; 3 Keb. 470; *sub nom. EMERTON v. VINER*, 3 Keb. 434.

Annotations.—*As to* (1) *Consd. R. v. Winton* (1792), 5 Term Rep. 89. *As to* (2) *Consd. R. v. Winton* (1792), 5 Term Rep. 89. *Reid. R. v. Smith* (1734), 7 Mod. Rep. 234.

745. Attachment—Unless falsification unintentional.—*WATSON'S CASE*, No. 585, *ante*.

Attachment for contempt of court generally, see CONTEMPT OF COURT, ATTACHMENT & COMMITMENT, pp. 46 *et seq.*, *ante*.

746. Remedy by action.—Where in the return to a writ of *habeas corpus* two causes were assigned for a prisoner's detention, first, a conviction for smuggling, & second, desertion from the navy:—*Held*: the latter cause could not be impeached on affidavit, for the purpose of showing either that the prisoner had never been a seaman in the navy or that, supposing him in fact a seaman, he had been illegally impressed in the first instance.

We are bound by the return. If it is false, deft.'s remedy is by action (*per Cur.*).—*R. v. ROGERS* (1823), 3 Dow. & Ry. K. B. 607; *sub nom. ROGERS'S CASE*, 2 L. J. O. S. K. B. 44.

Annotations.—*Reid. R. v. King* (1843), 13 L. J. M. C. 43; *Re Fletcher* (1844), 8 J. P. 168.

747.—[In an action against the keeper of the Queen's prison for making a false return to a writ of *habeas corpus*:—*Held*: a count stating that deft. "falsely & deceitfully returned, etc.", without showing wherein the return was alleged to be false, was bad.—*COBBETT v. HUDSON* (1852), 19 L. T. O. S. 166.

(i) *Where Production impossible.*

748. Reason for non-production—Ought to be given.—*R. v. GAVIN*, No. 822, *post*.

749.—*Must be unequivocal.*—*VINER'S CASE*, No. 744, *ante*.

750.—[—(1) An attachment may be granted for making an insufficient return to the first writ of *habeas corpus*, without issuing an *alias* & a *pluries* writ.

(2) The return to a *habeas corpus* was "I had not at the time of receiving this writ, nor have I since had the body of B. detained in my custody, so that

I could not have her, etc." :—*Held*: this was a bad return & an attachment would be granted against the party who made it.—*R. v. WINTON* (1792), 5 Term Rep. 89; 101 E. R. 51.

751.—[—*R. v. ROBERTS*, No. 709, *ante*.

752. Previous liberation—Whether a good return.—*R. v. WRIGHT* (1731), 2 Stra. 915; 93 E. R. 939; *sub nom. ANON.*, 2 Barn. K. B. 35.

753.—[—The return to a *habeas corpus* that the person was discharged out of custody by an order of sessions, generally, is a good return for filing the writ.—*R. v. BETHUEN* (1738), Andr. 279; 95 E. R. 399.

754.—[—An under-sheriff, who, to his return to a *habeas corpus* for bringing the body of a debtor on another matter, had annexed the original writ, was excused from returning the writ, on acknowledging that he had deft. once in his custody, & that he was at large.—*Ex p. WORCESTERSHIRE (SHERIFF), BARBER v. TYNDAL* (1822), 1 L. J. O. S. K. B. 35.

755.—*Custody wrongfully given to another person.*—[To a writ of *habeas corpus* sued at the instance of the parent of a child, which had been wrongfully detained by the deft., a return was made by deft. to the effect that, as he had, before the issuing of the writ, parted with the custody of the child so detained by him to another person who had taken her out of the jurisdiction, it was impossible for him to obey the writ:—*Held*: (1) it was no excuse for non-compliance with the writ that deft. had wrongfully handed over the child to another person, & the return was bad; (2) an attachment must issue against deft. for disobedience to the writ.

(3) An appeal lies to the Ct. of Appeal against an order for an attachment for disobedience to a writ of *habeas corpus*.—*R. v. BARNARDO* (1889), 23 Q. B. D. 305; 58 L. J. Q. B. 553; 61 L. T. 547; 54 J. P. 132; 37 W. R. 789; 5 T. L. R. 673, C. A.

Annotations.—*As to* (1) *Consd. Barnardo v. Ford, Gossage's Case*, [1892] A. C. 326. *As to* (3) *Reid. Cox v. Hakes* (1890), 15 App. Cas. 506. *Generally, Mentd. O'Shea v. O'Shea & Parnell* (1890), 15 P. D. 59; *Re Evans, Evans v. Noton*, [1893] 1 Ch. 252; *Seaman v. Burloy*, [1896] 2 Q. B. 344; *Re Foreign Tribunals Evidence Act, 1856, Eccles v. Louisville & Nashville Railroad Co.* (1911), 56 Sol. Jo. 74; *R. v. Manchester Local Profiteering Committee, Ex p. L. & Y. Ry.* (1920), 89 L. J. K. B. 1089.

756.—[—*BARNARDO v. FORD, GOSSAGE'S CASE*, No. 469, *ante*.

E. Hearing of the Cause.

See C. O. R., rr. 224, 226.

757. What parties must be present—Party in custody—Unless presence dispensed with by consent.—[Where a prisoner applied for a writ of *habeas corpus*, the ct., on granting the writ, gave leave for the matter to be disposed of without bringing up the prisoner, if the consent of all the parties interested could be obtained, but not otherwise.—*R. v. GRIFFITH* (1844), 9 J. P. 23.

758.—[—*Re GILBERT* (1845), 9 J. P. Jo. 115.

759.—[—On a motion to discharge a prisoner out of custody, he having been brought up by *habeas corpus* the prisoner was not present:—*Held*: the motion could not be made in his absence.—*Re BROWN* (1852), 18 L. T. O. S. 224; *subsequent proceedings*, 18 L. T. O. S. 238.

PART V. SECT. 1, SUB-SECT. 4.—
D. (h).

745 i. Punishment for—Attachment.—[It is the duty of the ct. to issue a rule

ex mero motu, calling upon resp. to show cause why an attachment should not issue against him, if it has reason to believe that his return is untrue.—*Ex p. WEST* (1861), 2 Legge, 1475.—*AUS.*

PART V. SECT. 1, SUB-SECT. 4.—E.
d. *Right of prisoner to be present.*—[Prisoner has a right to be present & to hear what is alleged why he should be detained.—*Re McMURRER* (1907), 2 E. L. R. 436.—*CAN.*

Sect. 1.—Ad subjiendum: Sub-sect. 4, E., F. & G.

760. — Party having custody.]—The ct. will receive the return to a writ of *habeas corpus*, although the party called upon to make it is not present.

Service of the writ was made by leaving it with "the brother & agent" of the party called upon, at his place of abode:—*Held*: it was sufficient.—*Re HAKEWILL* (1852), 12 C. B. 223; 138 E. R. 888. *Annotations*:—*Reid. Re Andrews* (1873), L. R. 8 Q. B. 153; *Re Edwards* (1873), 42 L. J. Q. B. 99.

761. Order in which counsel heard—Where prisoner brought up.]—*Ex p. GARCIA*, No. 687, ante.

762. — —.]—*CARUS WILSON'S CASE*, No. 650, ante.

763. Where order nisi granted.]—Upon the argument of a rule nisi for a *habeas corpus* the case is to be treated in the same manner as if the prisoner was brought up upon a *habeas corpus* granted in the first instance, & the ct. will look to the whole cause appearing upon the return.—*Ex p. BULL* (1546), 1 Saund. & C. 141; 15 L. J. Q. B. 235; 10 Jur. 827.

Annotation:—*Reid. Re Terraz & Extradition Acts*, 1870 & 1873 (1878), 39 L. T. 502.

764. Notice of—Service on Saturday afternoon for Monday insufficient—Unless right to be discharged clear.]—*BROMLEY'S CASE* (1821), 2 Jac. & W. 453; 37 E. R. 701, L. C.

765. — — Prisoner in custody under 8 & 9 Vict., c. 8—To Secretary at War.]—*Ex p. GALE* (1845), 14 L. J. Q. B. 316; 5 L. T. O. S. 202; 10 Jur. 334.

F. Custody pending Hearing—Bail.

Right to bail, see, generally, CRIMINAL LAW & PROCEDURE.

766. Prisoner admitted to bail.]—*BRONKER'S CASE* (1647), Sty. 16; 82 E. R. 495.

767. —.]—A person taken on *excommunicato capiendo* is bailable while the return of the *habeas corpus* is under the consideration of the ct.—*R. v. DAVISON* (1700), 1 Salk. 105; 91 E. R. 97.

768. —.]—*R. v. BETHIEL*, No. 656, ante.

769. —.]—When a deft. who has been summarily convicted by justices is brought up by *habeas corpus*, & the question of the legality of his commitment remains for future argument, the ct. will admit him to bail until the case is decided.—*Ex p. LORD* (1846), 4 Dow. & L. 405; 2 New Mag. Cas. 40; 1 Saund. & C. 222; 8 L. T. O. S. 146; *sub nom. R. v. LORD*, 16 L. J. M. C. 15; *sub nom. Re LORD*, 10 J. P. Jo. 771.

770. —.]—Rule calling upon a deft. to surrender where, upon a *habeas corpus*, he has been set at liberty upon his own recognisance pending the rule, with a dispensation as to his personal attendance upon the argument, & the judgment being against him.—*R. v. COLLIER & BAILEY* (1854), 23 L. T. O. S. 97.

771. —.]—The ct. having granted a rule nisi for a writ of *habeas corpus*, which might not come on for argument for some time, admitted the prisoner to bail forthwith.—*Re HEARSON*

(1891), 7 T. L. R. 283, D. C.; *subsequent proceedings*, 64 L. T. 535, D. C.

772. Prisoner remanded in custody—Before return filed.]—*R. v. INDICALMOIS* (1663), 1 Sid. 143; 82 E. R. 1021.

773. —.]—*ANON.* (1678), 1 Vent. 330; 86 E. R. 213.

Annotation:—*Reid. R. v. Bambridge* (1729), 1 Barn. K. B. 106.

774. — After return filed.]—*CROFTON'S CASE* (1662), 1 Sid. 78; 82 E. R. 980; *sub nom. R. v. CROFTON*, 1 Keb. 305.

Annotation:—*Reid. R. v. Wyndham* (1716), 1 Stra. 2.

775. — —.]—P. was brought up by *habeas corpus* from the Tower. His counsel pressed to have the return filed, supposing that he would be then a prisoner to the ct. & committed to the Marshalsea, but the ct. ordered the return to be filed, & notwithstanding remanded him to the Tower, as they said they might do.—*PEYTON'S CASE* (1680), 1 Vent. 346; 86 E. R. 223.

776. —.]—Y. was committed to the custody of the marshal for contempt, after which, application being made to the Ct. of C. P. for a *habeas corpus*, & granted, the Ct. of K. B. at the same time made a rule to bring him into their ct., but that ct. discharged their own rule, & the Ct. of C. P. granted a second *habeas corpus*. On the return day of the second *habeas corpus* the Ct. of K. B. made a rule to carry him into their ct. on a day after the return of the second *habeas corpus*. The marshal brought in the body on the second *habeas corpus*, & returned the rule of commitment, & the rule made on the return day of the second *habeas corpus*. The ct. remanded him, but ordered him to be brought up on the Monday following, & deferred the consideration of his discharge till that day.—*CORK v. BAKER* (1717), Cooke, Pr. Cas. 13; 1 Stra. 63; 125 E. R. 927.

777. —.]—*R. v. PIXLEY* (1733), 2 Barn. K. B. 275; 94 E. R. 497; *subsequent proceedings*, 2 Barn. K. B. 321.

778. Writ delivered in beginning of vacation—Returnable next term—Prisoner cannot be brought out of custody immediately & be kept out during vacation.]—*HOLDROID v. LIDDEL* (1697), 1 Ld. Raym. 241; 91 E. R. 1057.

G. Discharge of Person in Custody.

See C. O. R., rr. 224, 225, 227.

779. Motion for—When made—No opposition offered.]—It is not necessary to wait till the rising of the ct. to move the discharge of a prisoner out of custody, on a return to a *habeas corpus*, where no notice of any opposition to the motion has been given. The ct. will order him to be discharged forthwith.—*Re HOWARD* (1844), 2 Dow. & L. 536; 4 L. T. O. S. 142; 8 J. P. 805.

780. Commitment declared bad—Rule absolute conclusive.]—Where the Bail Ct. has made absolute a rule for a *habeas corpus*, on the ground of the insufficiency of the commitment, the Ct. of Q. B. will not re-open that question by way of appeal from the single judge, but will at once order the prisoner to be discharged.—*Re CAVANAGH* (1842), 6 J. P. 56.

PART V. SECT. 1, SUB-SECT. 4.—F.

774 i. Prisoner remanded in custody—After return filed.]—Where the original warrant of commitment is defective, prisoner is not entitled to be discharged upon the return but should be detained until the committing magistrate has an opportunity to give the gaoler a new warrant.—*Re LEBLANC* (1914), 14 E. L. R. 106; 15 D. L. R. 572; 22 Can. Crim. Cas. 208.—CAN.

PART V. SECT. 1, SUB-SECT. 4.—G.

e. Commitment declared bad—Warrant defective—For not showing conviction.]—A warrant of commitment recited that E. had been charged with having an intoxicant in his possession & thereupon, having considered the matter of the complaint, "I adjudged E. should be imprisoned in the common gaol"—*Held*: the warrant defective for not showing any conviction, &

must be discharged.—*Ex p. KITTAMAS* (1891), 2 B. C. R. 232.—CAN.

f. — —.]—*R. v. LALONDE* (1895), 2 Terr. L. R. 281.—CAN.

g. — —.]—A person undergoing imprisonment following a conviction which is bad for not showing the grounds of conviction is entitled to be discharged.—*R. v. PORTE* (1908), 18 Man. L. R. 222; 9 W. L. R. 98; 14 Can. Crim. Cas. 238.—CAN.

781. Court may grant protection on.]—A wife was brought up, upon the return of a *habeas corpus*, which had issued at the application of her husband. It appeared that she had been ill-treated by him & had come to debts for security & protection, & she swore the peace against him:—*Held*: the ct. would not order her to be delivered to her husband but would tell her she was at liberty to go where she thought proper, & would give her a tipstaff to secure her from any insult in her return to her friends.—*R. v. BROOKE & FLADGATE, GREGORY'S CASE* (1766), 4 Burr. 1991; 98 E. R. 38.

Annotations:—*Reid. R. v. Jackson* (1891), 64 L. T. 679; *Mentd. Re Cochrane* (1840), 8 Dowl. 630.

782. —.]—On a *habeas corpus* the ct. will make no other order as to the party, but to see he is under no illegal restraint.

We will order our tipstaff to wait upon her home to her guardian (*per cur.*).—*R. v. CLARKSON* (1721), 1 Stra. 444; 93 E. R. 625.

Annotations:—*Reid. R. v. Delaval* (1763), 3 Burr. 1434; *Re Lloyd* (1841), 4 Scott, N. R. 200. *Mentd. R. v. Johnson* (1724), 1 Stra. 579.

783. —.]—Where a person supposed to be improperly in custody is brought up on *habeas corpus*, the ct., if there appear no ground for restraint, will order that such person be at liberty to go where he pleases, & will, if necessary, give him the protection of an officer in going.—*R. v. GREENHILL* (1836), 4 Ad. & El. 624; 6 Nev. & M. K. B. 244; 111 E. R. 922.

Annotations:—*Reid. Thomasset v. Thomasset*, [1894] P. 295. *Mentd. Ex p. Fulbrook* (1847), 11 J. P. Jo. 102; *Re Hakewill* (1852), 12 C. B. 223; *R. v. Smith* (1853), 17 Jur. 24; *R. v. Clarke* (1857), 7 E. & B. 186; *Re Andrews* (1873), L. R. 8 Q. B. 153; *R. v. Prince* (1875), L. R. 2 C. C. R. 154; *Re Agar-Ellis, Agar-Ellis v. Lascelles* (1883), 24 Ch. D. 317, C. A.

784. Not where suspected of felony.]—Where prisoners, taken into custody after an engagement at sea between a revenue cutter & a vessel suspected to be a smuggler, of which the prisoners were the crew, were delivered on board the King's ship, & detained for fourteen days without any warrant, & were afterwards brought up by *habeas corpus* to be discharged, & it appearing from the return that there was cause to suspect them of a felony, the ct. refused a discharge, & directed them to be committed to the custody of the Marshal of the Marshalsea, in order that they

might be taken before a competent tribunal to be dealt with according to law.—*Ex p. KRANS* (1823), 1 B. & C. 258; 2 Dow. & Ry. K. B. 411; 1 Dow. & Ry. M. C. 272; 107 E. R. 96.

Annotations:—*Consd. Ex p. Terraz* (1878), 4 Ex. D. 63. *Reid. R. v. Mount* (1875), L. R. 6 P. C. 283; *R. v. Brixton Prison, Ex p. Servini*, [1914] 1 K. B. 77. *Mentd. Watson's Case* (1839), 9 Ad. & El. 731.

785. Not where cause of detention differs from ground of application.]—*Ex p. GARCIA*, No. 687, ante.

786. After hearing order nisi—& before return.]—*Ex p. JACKLIN* (1844), 2 Dow. & L. 103; 1 New Sess. Cas. 280; 13 L. J. M. C. 139; 3 L. T. O. S. 207; 8 J. P. 539.

787. —.]—*Re GESWOOD* (1853), 2 E. & B. 952; 23 L. J. M. C. 35; 18 J. P. 216; 118 E. R. 1022; *sub nom. Ex p. GESSWOOD*, 22 L. T. O. S. 133; 2 W. R. 94; 2 C. L. R. 269.

Annotations:—*Consd. Re Smith* (1858), 3 H. & N. 227. *Reid. Re Allison* (1875), 10 Exch. 561; *Ex p. Perham* (1859), 2 E. & E. 383.

788. Re-arrest on same cause—Ground for attachment.]—SEARCHER'S CASE (1588), 1 Leon. 70; 74 E. R. 65.

789. Privilege from arrest after—Changing custody in court.]—When the ct. delivers on a *habeas corpus*, protection to the party *redeundo* is of course. If they change the custody of the person, it is always done in ct.—*R. v. DELAVAL* (1763), 1 Wm. Bl. 410; 3 Burr. 1434; 96 E. R. 234.

Annotations:—*Reid. R. v. Blake* (1832), 4 B. & Ad. 355. *Mentd. R. v. Greenhill* (1836), 4 Ad. & El. 624; *Re Lloyd* (1841), 3 Man. & G. 547; *R. v. Mears & Chalk* (1851), 4 Cox. C. 425; *R. v. Clarke* (1857), 7 E. & B. 186; *St. Pancras Parish v. Clapham Parish* (1860), 24 J. P. 613; *Re Andrews* (1873), L. R. 8 Q. B. 153; *Thomasset v. Thomasset*, [1894] P. 295.

790. —.]—Deft. having been arrested on a writ *de contumace capiendo*, was brought up by *habeas corpus* before a judge, & obtained his discharge. Within two minutes afterwards he was again arrested on a writ *de contumace capiendo*, issued into Middlesex for the same cause:—*Held*: he was privileged from arrest *redeundo* from his attendance before the judge, & the ct. would discharge him out of the sheriff's custody.—*R. v. BLAKE* (1832), 4 B. & Ad. 355; 2 Nev. & M. K. B. 312; 2 L. J. K. B. 29; 110 E. R. 489.

Annotation:—*Reid. Re Douglas* (1842), 12 L. J. Q. B. 49.

h. —.]—*R. v. CHITNITA* (1914), 27 W. L. R. 268.—CAN.

k. — For want of jurisdiction in committing magistrate.]—Deft. had been in prison under a warrant of commitment issued on a conviction made by a magistrate who was disqualified by reason of pending litigation between him & deft.—*R. v. LORRIMER* (1909), 7 E. L. R. 117.—CAN.

l. —.]—*R. v. WISHART* (1910), 17 O. W. R. 967; 2 O. W. N. 491.—CAN.

m. —.]—*R. v. JOHNSON* (1912), 21 W. L. R. 900; 5 D. L. R. 523.—CAN.

n. —.]—*R. v. ALEXANDER, R. v. SHOULICE* (1913), 25 W. L. R. 290.—CAN.

o. —.]—*R. v. BLOOM* (1913), 26 W. L. R. 459.—CAN.

p. —.]—*R. v. KOLEMBER* (1914), 27 W. L. R. 37.—CAN.

q. — Substituting new charge—Prisoner discharged.]—*R. v. MINES* (1894), 25 O. R. 577.—CAN.

r. —.]—*R. v. DAVIS* (1912), 22 W. L. R. 837; 7 D. L. R. 608.—CAN.

s. —.]—*R. v. AVON* (1919), 45 O. L. R. 383, 633; 32

Can. Crim. Cas. 79; 16 O. W. N. 283; 45 D. L. R. 633.—CAN.

t. Conviction & punishment illegal.]—*R. v. BRISBOIS* (1902), 10 O. W. R. 869; 5 O. L. R. 264.—CAN.

a. —.]—*R. v. SEVENTEEN CHINAMEN* (1907), 3 E. L. R. 551.—CAN.

b. —.]—*R. v. PEPPER* (1910), 19 Man. L. R. 209.—CAN.

c. Conviction under repealed Act.]—A prisoner was convicted under an Act repealed prior to the conviction:—*Held*: prisoner must be discharged.—*Re KAULBACK* (1914), 13 E. L. R. 580; 15 D. L. R. 524.—CAN.

d. Whether court may grant protection from civil proceedings, arising out of imprisonment, to gaoler.]—*Re DART* (1903), 40 N. S. R. 624.—CAN.

e. — Or to other person.]—Where a prisoner is entitled to discharge, under a writ of *habeas corpus*, by reason of no offence being disclosed in the material under which he was committed, such discharge cannot be made conditional on no action being brought in respect of the conviction.—*R. v. LOWERY* (1907), 10 O. W. R. 755; 15 O. L. R. 182; 13 Can. Crim. Cas. 105.—CAN.

784 i. Not where suspected of felony.]—The ct. refused to discharge a prisoner on *habeas corpus*, charged with murder in Ireland, communication having been made by the Provincial to the

Home Govt. on the subject, & no answer received, when prisoner had been in custody less than a year.—*R. v. FITZGERALD* (1834), 3 O. S. 300.—CAN.

f. Not where prisoner detained pending hearing of reserved case.]—*R. v. PRASILOSKI* (1909), 12 W. L. R. 162.—CAN.

g. Where proceedings irregular.]—*Re MCEACHERN* (1880), 1 R. & G. 321.—CAN.

hh. Commitment doubtful—Prisoner should be discharged.]—A judge should on a *habeas corpus*, when doubting the sufficiency of a warrant of commitment, discharge prisoner.—*Re BEEBE* (1863), 3 P. R. 270.—CAN.

kk. Not when good criminal process comes to hands of sheriff.]—A man, arrested under bad criminal process & while he is legally in custody good criminal process comes into the hands of the sheriff, is not entitled to be discharged under a writ of *habeas corpus*.—*UNITED STATES v. WEBBER* (1912), 11 E. L. R. 379.—CAN.

ll. Deportation order under ultra vires orders in council.]—Where immigrants were ordered to be deported under *ultra vires* orders in council:—*Held*: they were entitled to be discharged upon *habeas corpus*.—*Re NARAIN SINGH* (1913), 18 B. C. R. 506.—CAN.

Sect. 1.—*Ad subjiendum*: Sub-sect. 4, G., H. & I.; sub-sect. 5.]

**791. —[—*Re* DOUGLAS, No. 712, ante.
See, generally, SHERIFFS & BAILIFFS.**

H. Appeals.

See C. O. R., r. 267; Judicature Act, 1873 (c. 66), ss. 19, 47.

792. From decision on rule nisi—Under Judicature Act, 1873 (c. 66), s. 19.]—(1) Sect. 19 of the above Act gives an appeal from orders made by the High Ct. of Justice on application for *habeas corpus*, whether the order grants or refuses the writ.

(2) The ct. has discretionary power to award to the successful party the costs in the ct. below.—*Ex p. COX* (BELL) (1887), 20 Q. B. D. 1; 57 L. J. Q. B. 98; 58 L. T. 323; 52 J. P. 484; 36 W. R. 209; 4 T. L. R. 81, C. A.; *revid.* on other grounds, *sub nom. COX v. HAKES* (1890), 15 App. Cas. 506, H. L.

Annotations:—*As to* (1) *Reid. R. v. Barnardo* (1889), 23 Q. B. D. 305. *Generally, Mentd. Seaman v Burley*, [1896] 2 Q. B. 344.

793. —[—Custody of children.]—An appeal lies from an order of the Q. B. Div. directing the issue of a writ of *habeas corpus* to bring an infant before the ct. in order to determine who is to have the custody of & control over such infant.—*BARNARDO v. McHUGH*, [1891] A. C. 388; 61 L. J. Q. B. 721; 65 L. T. 423; 55 J. P. 628; 40 W. R. 97; 7 T. L. R. 726, H. L.; *affg. S. C. sub nom. R. v. BARNARDO, JONES'S CASE*, [1891] 1 Q. B. 194, C. A.

Annotations:—*Mentd. Re McGrath*, [1892] 2 Ch. 496; *R. v. Lewis* (1893), 9 T. L. R. 228; *Humphrys v. Polak*, [1901] 2 K. B. 385; *R. v. New* (1904), 20 T. L. R. 515.

794. —[—BARNARDO v. FORD, GOSSAGE'S CASE, No. 469, ante.

795. —Not in "criminal cause or matter"—Person in custody for alleged extradition crime.]—The Q. B. Div. having refused an application for a writ of *habeas corpus* made on behalf of a person who had been committed to prison under Extradition Act, 1870 (c. 52), s. 10, as a fugitive criminal accused of an extradition crime:—*Held*: the decision of the Q. B. Div. was given in a "criminal cause or matter" within the meaning of Jud. Act, 1873 (c. 66), s. 47, & therefore no appeal would lie to the Ct. of Appeal.—*Ex p. WOODHALL* (1888), 20 Q. B. D. 832; 57 L. J. M. C. 71; 59 L. T. 841; 52 J. P. 581; 36 W. R. 655; 4 T. L. R. 515, C. A.
Annotations:—*Folld. R. v. Brixton Prison, Ex p. Savarkar*,

[1910] 2 K. B. 1056. *Appld. R. v. Garrett, Ex p. Sharf*, [1917] 2 K. B. 99. *Reid. R. v. Barnardo* (1889), 23 Q. B. D. 305; *Cox v. Hakes* (1890), 15 App. Cas. 506; *Ex p. Schofield*, [1891] 2 Q. B. 428. *Mentd. R. v. Young*, London J.J. (1891), 61 L. J. M. C. 42; *Payne v. Wright* (1892), 61 L. J. Q. B. 398; *Ex p. Pulbrook*, [1892] 1 Q. B. 86; *Seaman v. Burley*, [1896] 2 Q. B. 344; *R. v. Wiltshire J.J.*, *Ex p. Jay*, [1912] 1 K. B. 566; *Scott v. Scott*, [1912] P. 241; *R. v. Manchester Local Profitteering Committee, Ex p. L. & Y. Ry.* (1920), 89 L. J. K. B. 1089; *Re Clifford & O'Sullivan*, [1921] 2 A. C. 570; *Provincial Cinematograph Theatres v. Newcastle-upon-Tyne Profitteering Committee* (1921), 125 L. T. 651.

796. —[—On an application to the Ct. of Appeal for a rule nisi for a *habeas corpus* on behalf of one who had been committed on the charge of an extraditable offence, it appeared that the Div. Ct. had refused the application. It was admitted that no appeal would lie from the Div. Ct. & in the alternative the application was made to the Lord Chief Justice individually as a judge of the K. B. Div.:—*Held*: as the Lord Chief Justice was sitting as a member of the Ct. of Appeal & not as a judge of the K. B. Div. the ct. could not deal with the application.—*Ex p. LE GROS* (1914), 30 T. L. R. 249; 78 J. P. Jo. 63, C. A.

797. —[—Person in custody under Fugitive Offenders Act, 1881 (c. 69).]—*Appct.*, having been committed, under an Indian warrant which charged him with certain offences, for return to India under the above Act for trial there, obtained from the K. B. Div. a rule calling upon the governor of the prison to show cause why a writ of *habeas corpus* should not issue. The K. B. Div. having discharged the rule, *appct.* appealed:—*Held*: no appeal lay to the Ct. of Appeal, the decision of the K. B. Div. having been given in a "criminal cause or matter" within the meaning of Jud. Act, 1873 (c. 66), s. 47.—*R. v. Brixton Prison (Governor), Ex p. SAVARKAR*, [1910] 2 K. B. 1056; 80 L. J. K. B. 57; 103 L. T. 473; 26 T. L. R. 561; 54 Sol. Jo. 635, C. A.

Annotations:—*Reid. Ex p. Le Gros* (1914), 30 T. L. R. 249. *Mentd. R. v. Garrett, Ex p. Sharf*, [1917] 2 K. B. 99.

Compare No. 2402, *post*.

See, further, EXTRADITION & FUGITIVE OFFENDERS.

798. From order discharging prisoner—No appeal to Court of Appeal.]—*Cox v. HAKES*, No. 508, ante.

799. —Made by colonial court.]—A.-G. FOR COLONY OF HONG KONG v. KWOK-A-SING, No. 531, ante.

800. —[—M. & W. were convicted in Victoria of manslaughter on the high seas &

PART V. SECT. 1, SUB-SECT. 4—H.

792 i. From decision on rule nisi.]—When a rule nisi for *habeas corpus* has been made absolute it cannot be reopened & reargued, even if the rule absolute be not drawn up.—*R. v. REID* (1902), 20 N. Z. L. R. 604.—N.Z.

m. Not in "criminal cause or matter"—Person in custody for alleged extradition crime.]—The Ct. of Appeal has no jurisdiction to entertain an appeal from an order, on *habeas corpus*, discharging a prisoner from custody for an alleged extradition crime.—*Re TIDDERINGTON* (1912), 20 W. L. R. 355; 17 B. C. R. 81; 5 D. L. R. 138.—CAN.

n. —[—There is no appeal from a refusal to grant a writ of *habeas corpus* in respect of a person committed under Extradition Act.—*Ex p. BOUVY* (No. 3) (1900), 18 N. Z. L. R. 608.—N.Z.

o. —Selling liquor contrary to Temperance Act.]—*Re McNUTT* (1912), 47 S. C. R. 259.—CAN.

p. —At instance of Crown.]—*R. v. REID* (1908), 17 O. L. R. 578;

12 O. W. R. 819; 14 Can. Crim. Cas. 329.—CAN.

q. —[—Except on certificate of Attorney-General.]—There is no appeal to the Ct. of Appeal from an unanimous judgment of Div. Ct., refusing to discharge on *habeas corpus*, prisoner held under Liquor License Act unless A.-G. certifies that the point at issue is of such importance as to justify the appeal.—*R. v. LEACH* (1912), 21 O. W. R. 919; 18 Can. Crim. Cas. 487.—CAN.

r. Appeal—Substituted for successive applications to different courts.]—The right of appeal in *habeas corpus* cases is substituted under 29 & 30 Vict. c. 45 for successive applications from ct. to ct.—*Re HALL* (1883), 8 A. R. 135.—CAN.

s. —[—*Re* BOWACK (1892), 2 B. C. R. 216.—CAN.

t. —[—Appeal judgment final.]—A person restrained of his liberty has a right of appeal to the Ct. of Appeal, whose judgment becomes final & conclusive, & may be pleaded as *res judicata*.—*TAYLOR v. SCOTT* (1898), 30 O. R. 475.—CAN.

u. —[—No appeal to full court.]—No appeal to the full ct. lies from the decision of a single judge refusing a *habeas corpus*.—*R. v. BARRE* (1904), 15 Man. L. R. 420; 2 W. L. R. 376.—CAN.

798 i. No appeal to Court of Appeal—From order discharging prisoner.]—*McCREA v. WATSON* (1906), 2 E. L. R. 170; 37 N. B. R. 623.—CAN.

798 ii. —[—An appeal does not lie from an order of a judge for the discharge of a prisoner upon *habeas corpus*.—*Re RAHIM* (1912), 21 W. L. R. 536.—CAN.

798 iii. —[—*Re* MACKAY (1910), 29 Can. Crim. Cas. 282; 40 D. L. R. 287; 52 N. S. R. 165.—CAN.

798 iv. —[—Except by special leave.]—*Re* IMMIGRATION ACT, *R. v. JEU JANG HOW* (1919), 3 W. W. R. 1115; 50 D. L. R. 41; 59 S. C. R. 176; 32 Can. Crim. Cas. 103.—CAN.

b. —[—From judge sitting out of term.]—No appeal lies to Ct. of Appeal from a decision of a judge sitting for the ct. out of term, on a motion to discharge a prisoner on *habeas corpus*,

sentenced to penal servitude. On a return to a writ of *habeas corpus* to the effect that M. & W. were detained "for the cause & to the end that they may undergo the sentence aforesaid" the ct. ordered the prisoners to be discharged on the ground that by Penal Servitude Act, 1853 (c. 99), s. 6, sentence of penal servitude could not be carried into execution in the colony without the intervention of the Secretary of State. On appeal to the Privy Council:—*Held*: the return was sufficient, & in any case, the ct. erred in not remanding the prisoners until it was clear that no lawful means of executing the sentence could be found.—*R. v. MOUNT* (1875), L. R. 6 P. C. 283; 44 L. J. P. C. 58; 32 L. T. 279; 39 J. P. 408; 23 W. R. 572, P. C.

Annotations:—*Reid. Cox v. Hakes* (1890), 15 App. Cas. 506. *Mentd. R. v. Cuming, Ex p. Hall* (1887), 19 Q. B. D. 13.

801. From order of Court of Appeal—Granting writ—No appeal to House of Lords.]—*HOME SECRETARY v. O'BRIEN* (1923), *Times*, July 10, H. L.; *previous proceedings, sub nom. R. v. HOME SECRETARY, Ex p. O'BRIEN*, 39 T. L. R. 487, C. A.; *sub nom. Ex p. O'BRIEN*, 39 T. L. R. 413, D. C.

802. From order made at chambers—Relating to custody of children.]—*Ex p. EMERSON* (1895), 11 T. L. R. 218, D. C.

803. ———.]—*R. v. PINCKNEY*, No. 495, *ante*.

804. From order for attachment for disobedience.]—*R. v. BARNARDO*, No. 755, *ante*.

In extradition & fugitive offenders cases.]—*See* Nos. 795–797, *ante*.

I. Costs.

805. Expenses of bringing up prisoner—May be allowed to official.]—*R. v. GREENWAY*, No. 652, *ante*.

806. ———.]—*EDMONDS'S CASE* (1713), *Cooke, Pr. Cas.* 8; 125 E. R. 925.

807. ———.] But not general costs.]—The ct. has authority to give to the functionary who brings up a prisoner in obedience to a writ of *habeas corpus* at common law the expenses of so doing, but not his general costs.—*DODD'S CASE* (1858), 2 De G. & J. 510; 44 E. R. 1087; *sub nom. Re DODD*, 31 L. T. O. S. 29; 22 J. P. 52; 4 Jur. N. S. 291; 6 W. R. 207, 537, L. C.

Annotation:—*Mentd. Ex p. Anderson* (1860), 3 L. T. 622.

under either 29 & 30 Vict., c. 45, or R. S. O. 1874, c. 38, s. 18.—*Re BOUCHER* (1879), 4 A. R. 191.—*CAN.*

c. From order made at chambers.]—An order of a judge in chambers, made on the return of a writ of *habeas corpus*, is not appealable.—*Re GLASS* (1869), 6 W. W. & A.B. 103.—*AUS.*

d. ———.]—An order in the nature of a writ of *habeas corpus*, granted by a judge under Act for "Securing the liberty of the subject," is not appealable.—*Re MCKENZIE* (1881), 2 R. & G. 481.—*CAN.*

e. ———.]—An appeal from a judge in chambers must be to the Ct. of Appeal.—*Re HARPER* (1892), 23 O. R. 63.—*CAN.*

f. No appeal when applicant is at large.]—An appeal will not lie in any case of proceedings for or upon a writ of *habeas corpus* when at the time of bringing the appeal applt. is at large.—*FRASER v. TUPPER* (1880), 1 R. & G. 354.—*CAN.*

PART V. SECT. 1, SUB-SECT. 4.—I.

805 f. Expenses of bringing up prisoner—May be allowed to official.]—*ROBINSON v. HALL* (1827), *Tay.* 482.—*CAN.*

808 f. — Payable by prisoner.]—When the officer or other person to

whom a writ is directed has obeyed it by bringing up the body & making his return, the judge or ct. may make an order for payment by the applt. of the expenses of such officer or person.—*Re WEATHERALL* (1901), 21 C. L. T. 256; 1 O. L. R. 542.—*CAN.*

809 f. May be given to successful applicant.]—Where appcts. have been unlawfully deprived of their liberty, they ought to be indemnified as to costs.—*Re NARAIN SINGH* (1908), 13 B. C. R. 477.—*CAN.*

g. Not against person not bound to appear.]—Deft. was convicted for stealing the property of B., & was sentenced to be imprisoned. An order for deft.'s discharge, under a writ of *habeas corpus*, directed that B. pay to deft. his costs of the application & order for his discharge.—*Held*: B. was not bound to appear in answer to the summons for the writ of *habeas corpus*, & the fact of his not appearing was not to be regarded as conduct or acquiescence justifying the imposition of costs.—*R. v. BOWERS* (1901), 34 N. S. R. 550.—*CAN.*

h. Of appeal—General costs.]—General costs of appeal may be allowed where at time of instituting appeal prisoner was at large.—*FRASER v. TUPPER* (1880), 1 R. & G. 354.—*CAN.*

808. — Payable by prisoner.]—*EDMONDS'S CASE* (1713), *Cooke, Pr. Cas.* 8; 125 E. R. 925.

809. May be given to successful applicant.]—An incumbent having disregarded an order of inhibition issued against him the judge issued a *significavit* against the incumbent for contempt, & a writ of *de contumace capiendi* was issued under which he was arrested & imprisoned. On a writ of *habeas corpus* by the incumbent to be discharged:—*Held*: (1) he was entitled to be discharged; (2) the proceedings in respect of which he was arrested being civil & not criminal, he was entitled to his costs under the writ.

A judge, whose jurisdiction is challenged by prohibition, is entitled to appear & show cause, & to have his costs allowed.—*DALE'S CASE, ENRAGHT'S CASE* (1881), 6 Q. B. D. 376; 50 L. J. Q. B. 234; 45 J. P. 284, 300; *sub nom. Re SERJEANT v. DALE, Ex p. DALE, Re PERKINS v. ENRAGHT, Ex p. ENRAGHT*, 43 L. T. 769, L. J.J.; *affd. sub nom. ENRAGHT v. PENZANCE* (LORD) (1882), 7 App. Cas. 240, H. L.

Annotations:—*Generally, Mentd. Green v. Penzance* (1881), 6 App. Cas. 657; *Combe v. De La Bore* (1882), 22 Ch. D. 316; *R. v. Southampton JJ., Ex p. Cardy* (1906), 94 L. T. 437; *Re Hardy's Crown Brewery & St. Philip's Tavern, Manchester* (1910), 103 L. T. 520; *Colchester Brewing Co. v. Tending Licensing JJ.*, [1916] 2 K. B. 126.

810. ———.]—*Re WALTER*, No. 544, *ante*.

811. — Under Judicature Act, 1890 (c. 44), s. 5.]—The right to grant a writ of *habeas corpus* not being confined to the Crown side of the Q. B. Div., there is jurisdiction, when granting an application for *habeas corpus*, to order deft. to pay the costs of the application under the above Act.—*R. v. JONES*, [1894] 2 Q. B. 382; 63 L. J. Q. B. 656; 58 J. P. 733; 42 W. R. 607; 10 T. L. R. 502; 10 R. 287; *sub nom. R. v. MANSEL-JONES*, 70 L. T. 845, D. C.

Annotation:—*Reid. R. v. Woodhouse*, [1906] 2 K. B. 501.

812. Not against person not on record.]—*Re CARTER* (1893), 95 L. T. Jo. 37, D. C.

813. Of appeal—Whether costs in court below allowed.]—*Ex p. COX* (BELL), No. 792, *ante*.

SUB-SECT. 5.—ENFORCING OBEDIENCE TO WRIT.

See C. O. R., r. 221; Habeas Corpus Act, 1816 (c. 100).

k. ——— No costs allowed.]—Costs are not given in *habeas corpus* appeals, as a general rule, *in favorem libertatis*.—*Re JOHNSON* (1886), *Cass. Dig.* 386.—*CAN.*

l. In discretion of judge—Order for *habeas corpus* granted without costs.]—*Re ZWICKER* (1893), 26 N. S. R. 124.—*CAN.*

m. — Order for discharge.]—The order for discharge having been made with costs to be paid by the prosecutor:—*Held*: the judge had discretion to make the order.—*Re MURPHY* (1895), 28 N. S. R. 196.—*CAN.*

n. — Under Judicature Act 1897, s. 119.]—The costs of proceedings by *habeas corpus* are governed by above sect. & are in the discretion of the ct. or judge.—*Re WEATHERALL* (1901), 21 C. L. T. 256; 1 O. L. R. 542.—*CAN.*

o. — Conviction under provincial legislation.]—The ct., under above sect., has jurisdiction to award costs against the applt. for discharge upon *habeas corpus* when the conviction is for a penalty imposed by or for an offence created by provincial legislation.—*R. v. LEACH* (1908), 17 O. L. R. 643; 12 O. W. R. 1018, 1028.—*CAN.*

p. — Under Judicature (Ireland) Act, 1877, s. 53.]—*Re PROCTOR*, [1903] 2 I. R. 117.—*IR.*

Sect. 1.—Ad subjiendum: Sub-sects. 5 & 6. Sect. 2: Sub-sects. 1, 2 & 3.]

814. By attachment.]—VASPER *v.* EAST, No. 646, *ante*.

815. —.]—An attachment lies against a gaoler for corruptly refusing to return a *habeas corpus*.—*R. v. COLVIN* (1724), 8 Mod. Rep. 226; 88 E. R. 162.

816. —.]—*R. v. WRIGHT* (1731), 2 Stra. 915; 93 E. R. 939; *sub nom.* ANON., 2 Barn. K. B. 35.

817. —.]—Disregard having been shown to a *habeas corpus* at common law, an attachment was immediately granted.—*Ex p. BOSEN & BRANDT, R. v. BARBER* (1759), 2 Keny. 289; 96 E. R. 1185.

818. —.]—*R. v. FALKINGHAM* (1760), 1 Wm. Bl. 269; 96 E. R. 149.

819. —.]—*R. v. WOODWARD, Re THOMPSON* (1889), 5 T. L. R. 601, D. C.

820. —.]—*R. v. DURMILL, Ex p. EASINGWOLD UNION* (1899), *Times*, May 31, D. C.

821. — Against peer.]—*R. v. FERRERS (EARL)*, No. 499, *ante*.

822. — Unless disobedience unintentional.]—The ct. will not make absolute a rule for an attachment against a person to whom a writ of *habeas corpus* has been directed, simply because no return has been made to the writ, when it appears that the whole object of the writ has been satisfied by the discharge of the prisoner & the omission to make a return is not attributable to any improper motive.

In my opinion he ought to have made a return that he had discharged the party (LORD DENMAN, C.J.).—*R. v. GAVIN* (1848), 3 New Pract. Cas. 198; 11 L. T. O. S. 239; 15 Jur. 329, n.; 12 J. P. Jo. 390.

823. — On application supported by affidavit—After search made for return.]—To compel obedience to a writ of *habeas corpus* to bring up an impressed man, the party must first search at the Crown Office for the return, & if not found, apply, upon affidavit thereof, for an attachment.—*Ex p. HARRISON* (1805), 2 Smith, K. B. 408.

824. — Where service of writ invalid.]—*Ex p. WYATT* (1837), 5 Dowl. 389; Will. Woll. & Dav. 76; *sub nom.* *R. v. ROCHFORD & WYATT*, 1 Jur. 84. *Annotation:—Distd. R. v. Pinckney*, [1904] 2 K. B. 84.

825. —.]—*R. v. ROWE*, No. 641, *ante*.

SUB-SECT. 6.—STATUTORY PENALTIES UNDER HABEAS CORPUS ACT, 1679.

See Habeas Corpus Act, 1679 (c. 2), ss. 5, 9, 10.

826. Liability of gaoler—For not delivering copy of commitment to prisoner.]—Where a person was sent over from Ireland, under a warrant from the Secretary of State for Ireland, charged with an offence, & was committed to prison until he could be brought before a judge, & the warrant left with the gaoler:—*Held*: it was such a commitment & warrant as the prisoner was entitled to a copy under Habeas Corpus Act, 1679 (c. 2), s. 5, after it had been demanded, & an action of debt would lie against the gaoler for the recovery of the penalties prescribed by the Act.—*SEDLEY v. ARBOURN* (1800), 3 Esp. 174, N. P.

PART V. SECT. 1, SUB-SECT. 5.

814 i. By attachment.]—If the command of the writ is disobeyed the usual remedy by attachment may be resorted to.—*Re NORTON*, [1918] 2 W. W. R. 865; 13 Alta. L. R. 457.—CAN.

822 i. — Where disobedience intentional.]—The ct. of K. B. will attach one served with a *habeas corpus* to bring up the body of a person, if he sends him abroad.—*R. v. MERRICK* (1800), Rowe, 550.—IR.

827. —.]—Service of a demand of a copy of the commitment on the turnkey of a prison is not sufficient to support an action against the gaoler for the penalty incurred by him under Habeas Corpus Act, 1679 (c. 2), s. 5, for not delivering the copy to the prisoner within due time after the demand made, if the gaoler himself were in the prison. *Qu.*: whether a commitment in execution for a penalty, on conviction before a magistrate for an offence against the excise laws, be a commitment for "a criminal matter," within the provisions of the above Act, so as to entitle a prisoner to an action against the gaoler for not delivering a copy within a certain time after demand made.—*HUNTLEY v. LUSCOMBE* (1801), 2 Bos. & P. 530; 126 E. R. 1422.

Annotation:—Refd. Cobbett v. Slowman (1850), 4 Exch. 747.

828. — For removing prisoner to other custody.]—Action of debt against the gaoler, in whose custody pltf. had been detained under a commission of rebellion, to recover a penalty under Habeas Corpus Act, 1679 (c. 2), s. 9, for removing him to another gaol without a writ of *habeas corpus*, & without any of the causes of removal allowed in that statute.—*COBBETT v. SLOWMAN* (1850), 4 Exch. 747; 8 State Tr. N. S. 1075; 19 L. J. Ex. 270; 14 L. T. O. S. 378; 14 J. P. 226; 154 E. R. 1417; *subsequent proceedings* (1852), 19 L. T. O. S. 233; (1854), 9 Exch. 633, Ex. Ch.

Annotation:—Apprvd. Cobbett v. Truro (1853), 20 L. T. O. S. 258.

829. Liability of judge—For refusing writ of habeas corpus—Contempt of court.]—Contempt of the Ct. of Ch. is not a criminal charge within the meaning of Habeas Corpus Act, 1679 (c. 2), &, therefore, if a judge refuses a writ of *habeas corpus* to a person who is a prisoner for such contempt, he is not liable to the penalty under sect. 10 of the Act.—*COBBETT v. TRURO (LORD)* (1853), 20 L. T. O. S. 240, N. P.; *subsequent proceedings*, 20 L. T. O. S. 258.

830. Action for non-delivery of copy of commitment—Costs against gaoler.]—A prisoner suing the gaoler, as a party aggrieved, on Habeas Corpus Act, 1679 (c. 2), for refusing a copy of his warrant of commitment, having recovered the penalty, is entitled to costs.—*WARD v. SNELL* (1788), 1 Hy. Bl. 10; 126 E. R. 7.

Annotations:—Expld. & Distd. Bale v. Hodgetts (1823), 7 Moore, C. P. 602. *Refd. Creswell v. Hoghton* (1795), 6 Term Rep. 355; *Tyte v. Glode* (1797), 7 Term Rep. 267; *Guest v. Elwes* (1837), 5 Ad. & El. 115.

831. — What is sufficient demand for copy.]—*HUNTLEY v. LUSCOMBE*, No. 827, *ante*.

SECT. 2.—AD TESTIFICANDUM.

SUB-SECT. 1.—PURPOSES OF THE WRIT.

See Arbitration Act, 1889 (c. 49), s. 18 (2); Habeas Corpus Act, 1803 (c. 140); Habeas Corpus Act, 1804 (c. 102).

832. Prisoner to give evidence.]—A man in execution in the King's Bench may be brought up to give evidence by a *habeas corpus ad testificandum*.—*GEERY v. HOPKINS* (1702), 2 Ld. Raym. 851; 92 E. R. 68.

833. —.]—In an action to recover possession of premises, of which one A. was tenant. A. himself had to be called. A. was at the time in gaol, & a question then arose whether he could be

PART V. SECT. 1, SUB-SECT. 6.

*q. Not recoverable where prisoner confined upon warrant in execution.]—*ARSCOTT *v.* LILLEY (1886), 14 A. R. 297.—CAN.

produced without a *habeas corpus*, & if not, whether pltf. must not accompany the application for the writ by an affidavit stating the witness to be material:—*Held*: the prisoner would have to be brought up by *habeas corpus*, but as to the affidavit, that was in the discretion of the ct.—*DOE d. FOX v. BOWBANK* (1843), 1 L. T. O. S. 34.

834. —.]—The ct. has no power to make an order to bring up an insolvent debtor to give evidence in the matter of another insolvency. A *habeas corpus ad testificandum* is necessary.—*RE EVANS* (1848), 10 L. T. O. S. 503.

835. —.]—Where a prisoner is in confinement under a common law process, & it is required that he should attend in chambers under an order made by the chief clerk, the ct. will order a writ of *habeas corpus* to issue that he may attend in custody of the officer *de die in diem*.—*BUCKERIDGE v. WHALLEY* (1857), 6 W. R. 180.

836. — Before committee of House of Commons.]—(1) A *habeas corpus ad testificandum* issued to bring up a prisoner to give evidence before an election committee of the House of Commons on affidavit of service of a rule to show cause on the different persons concerned & no cause shown.

(2) The rule in such a case must be served on the person who would be liable for an escape & also on the persons who might proceed against him in case of an escape.—*RE PRICE* (1804), 4 East, 587; 1 Smith, K. R. 281; 102 E. R. 956. *Annotation*:—As to (1) & (2) *Fold. Re Pilgrim* (1835), 3 Ad. & El. 485.

837. —.]—*RE PILGRIM*, No. 853, *post*.

838. — Before arbitrator.]—The ct. will not grant a *habeas corpus* to take a person out of a prison, to go before an arbitrator to give evidence in a matter of arb.—*EX p. GREIVES* (1825), 3 L. J. O. S. K. B. 106.

839. —.]—It was ordered, by consent, that a verdict should be taken for pltf., subject to a special case to be stated by the parties, & if they disagreed as to facts, the case as to such facts to be settled by C., the order to be made a rule of ct. The parties differing as to facts, deft. required the presence before C., of a witness said to be material, who was in prison in execution for debt:—*Held*: a *habeas corpus* for the attendance of the witness before C. would be granted, the ct. considering C. to be an arbitrator within Civil Procedure Act, 1833 (c. 42), s. 40.—*GRAHAM v. GLOVER* (1855), 5 E. & B. 591; 25 L. J. Q. B. 10; 26 L. T. O. S. 73; 2 Jur. N. S. 160; 4 W. R. 25; 119 E. R. 601.

Annotation:—*Fold. Marsden v. Overbury* (1856), 18 C. B. 34.

840. —.]—The ct. granted a *habeas corpus ad testificandum* to bring up a prisoner in criminal custody for the purpose of giving evidence before an arbitrator.—*MARSDEN v. OVERBURY* (1856), 18 C. B. 34; 25 L. J. C. P. 200; 27 L. T. O. S. 81; 139 E. R. 1276.

841. Prisoner to be examined.—By military medical board.]—Habeas Corpus Act, 1803 (c. 140), s. 1, applies only to judicial inquiries, & does not authorise the ct. to grant a *habeas corpus* for the purpose of bringing a military officer, in prison for debt, before a medical board who are to report on his health.—*RE ST. JOHN DUNMOW GALWEY* (1868), 19 L. T. 262.

SUB-SECT. 2.—TO WHOM APPLICABLE.

See County Court Act, 1888 (c. 43), s. 112; *Criminal Procedure Act*, 1853 (c. 30), s. 9.

842. Not to person in forces of Crown.—Unless willing to attend.—Sailor on board warship.]—*R. v. RODDAM* (1777), 2 Cowp. 672; 98 E. R. 1300.

843. Not to prisoner of war.]—On a motion for a writ of *habeas corpus ad testificandum* to bring up an American prisoner of war to give evidence for pltf., he being the only witness in England who could prove the capture:—*Held*: no *habeas corpus* could issue.—*FURLY v. NEWNHAM* (1780), 2 Doug. K. B. 419; 90 E. R. 269.

Annotations:—*Reid. Schaffinius v. Goldberg* (1915), 85 L. J. K. B. 374; *R. v. Vine Street Police Station Superintendent, Ex p. Liebmanna*, [1916] 1 K. B. 208.

844. —.]—A prisoner in custody for high treason cannot be brought into ct. by *habeas corpus ad testificandum*. Neither will a *habeas corpus* to bring up a prisoner of war be granted.—*LANGSTON v. COTTON* (1795), Peake, Add. Ca. 21, N. P.

845. Not to prisoner committed for high treason.]—*LANGSTON v. COTTON*, No. 844, *ante*.

846. To lunatic.—If in fit state to be brought up.]—A *habeas corpus ad testificandum* may be obtained to bring up the body of a confined lunatic to give evidence in a cause, upon an affidavit showing that he is not a dangerous lunatic, & that he is in a fit state to be brought up.—*FENNELL v. TAIT* (1834), 1 Cr. M. & R. 584; 5 Tyr. 218; 149 E. R. 1213.

SUB-SECT. 3.—PROCEDURE.

See C. O. R., rr. 228, 229.

847. The application.—Made at chambers.]—An application for a *habeas corpus* under Habeas Corpus Act, 1803 (c. 140), ought to be made to a judge out of ct.—*GORDON'S CASE* (1814), 2 M. & S. 582; 105 E. R. 498.

848. —.]—An application for a *habeas corpus* under Habeas Corpus Act, 1804 (c. 102), ought to be made to a judge at chambers.—*BROWNE v. GIBBORNE* (1813), 2 Dowl. N. S. 963; 12 L. J. Q. B. 297; *sub nom.* ANON., 1 L. T. O. S. 57; *sub nom.* BROWN'S CASE, 7 Jur. 328.

849. Affidavit in support.—Necessity for.—Discretion of court.]—*DOE d. FOX v. BOWBANK*, No. 833, *ante*.

850. — Must show that witnesses material.]—No *habeas corpus ad testificandum*, of either case, civil or Crown, will be granted without an affidavit, that the witnesses required to be brought up are material witnesses.—*R. v. LAYER* (1722), Fortes. Rep. 390; 8 Mod. Rep. 82; 92 E. R. 907.

Annotations:—*Mentd. R. v. Orrery* (1722), 8 Mod. Rep. 96; *R. v. Lambe* (1791), 2 Leach, 552; *R. v. O'Connell* (1844), 5 State Tr. N. S. 1; *R. v. Duffy*, (1849), 7 State Tr. N. S. 795; *Mulcahy v. R.* (1867), 15 W. R. 446.

851. —.]—ANON. (1729), 1 Barn. K. B. 151; 94 E. R. 101.

852. — Must show that witness in fit & proper state to be brought up.—Lunatic.]—*FENNELL v. TAIT*, No. 846, *ante*.

853. Order for the writ.—Nisi only in first instance.]—The ct. granted a rule nisi for a *habeas corpus* to bring up a prisoner, in custody upon a

PART V. SECT. 2, SUB-SECT. 1.

8361. Prisoner to give evidence.—Before Legislative Assembly.]—The ct. can grant a writ to bring a prisoner before a committee of the Legislative Assembly for the purpose of giving evidence.—*RE KELLY, Ex p. THE SHERIFF* (1860), 2 Legge, 1275.—AUS.

a. — Before criminal court—
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For Crown.]—*R. v. TOWNSEND* (1857), 3 U. C. L. J. O. S. 184.—CAN.

t. — In civil action.—When necessary witness.]—*SPELLMAN v. SPELLMAN* (1890), 10 C. L. T. Occ. N. 20.—CAN.

a. —.]—ANON. (*citra* 1800), Rowe, 427.—IR.

b. —.]—ANON. (1828),

2 Ir. L. Rec. 1st ser. 71.—IR.

c. — Before taxing master.]—A solr. being in custody under an attachment, the ct. granted a writ directed to the marshal to bring him before the taxing-master, to enable him to attend the taxation of bills of costs.—*WALSH v. WILSON* (1852), 2 I. Ch. R. 79.—IR.

Sect. 2.—*Ad testificandum*: Sub-sect. 3. Sects. 3, 4 & 5.]

charge of felonious embezzlement, to give evidence before an election committee of the House of Commons, the rule directing notice to be first given to the A.-G., to the committing magistrates, to the constable who apprehended the prisoner, & to all persons at whose suit he might be detained on civil process.—*Re PILGRIM* (1835), 3 Ad. & El. 485; 1 Har. & W. 319; 4 L. J. M. C. 120; 111 E. R. 498; *sub nom.* *R. v. PILGRIM*, 4 Dowl. 89.

854. ——— **Form of.]**—Where *pltf.* moved *ex p.* for an order on the governor of a prison to produce a prisoner in ct. at the trial, but the time of hearing was uncertain, the ct. made the order in the form given in Seton, 5th edit., p. 89, but directed that the same should not be drawn up until the case was in the paper for trial.—*JENKS v. DITTON* (1897), 76 L. T. 591; 41 Sol. Jo. 530; 18 Cox, C. C. 608.

855. ——— **On whom served.]**—*Re PRICE*, No. 836, *ante*.

856. ——— **—.]**—*Re PILGRIM*, No. 853, *ante*.

SECT. 3.—AD RESPONDENDUM.

See Habeas Corpus Act, 1803 (c. 140).

857. Purposes of writ—To bring up prisoner in custody—From Admiralty Court—To King's Bench.]—*DOWNCI v. KEACH* (1702), Fortes. Rep. 245; 92 E. R. 837.

858. ——— **To bring up prisoner in custody—Trial or examination on new charge.]**—The ct. will grant a *habeas corpus* to the warden of the Fleet, to take the body of a debtor confined there, before a magistrate, to be examined, from time to time, respecting a charge of felony or misdemeanour, —*Ex p. GRIFFITHS* (1822), 5 B. & Ald. 730; 106 E. R. 1359.

859. ——— **—.]**—*R. v. WILSON & BAINE* (1848), 12 J. P. Jo. 455.

860. ——— **Not unless true bill found.]**—The ct. will not grant an application for a *habeas corpus* to remove a prisoner from gaol, where he is undergoing sentence, in order to take him before a magistrate in another county, to prefer another charge against him; but will grant a *habeas corpus* to bring him up for trial on a true bill being found against him at the assizes on that charge.—*R. v. DAY* (1862), 3 F. & F. 526.

861. ——— **Trial on previous felony.]**—The ct. will not grant a *habeas corpus* to bring up the body of a person in prison under sentence for a felony, for the purpose of having him tried for a previous felony.—*Re HARDWICK* (1837), Will. Woll. & Dav. 197; 1 J. P. 69.

862. ——— **Receive judgment on new conviction.]**—*Semble*: where a prisoner under sentence is brought up by *habeas corpus*, to take his trial for another offence, & after a second conviction, sentence is deferred, it is necessary that a fresh *habeas corpus* should issue to bring him before the ct. to receive judgment.

You had better take another writ. It may be as well that you take it from me as sitting at chambers, & not here (*PATTESON, J.*).—*R. v. HOLT* (1844), 2 L. T. O. S. 501; 1 Cox, C. C. 347.

863. ——— **To be charged with attachment.]**—Where an attachment issues against a deft. in custody in the K. B. prison it is to be lodged with the marshal, & a *habeas corpus* may then be moved for before the return of the attachment.—*TROTTER v. TROTTER* (1822), Jac. 533; 37 E. R. 952, L. C.

864. ——— **—.]**—Where it is sought to

charge a second attachment upon a person already in custody under a prior writ, the practice of the ct. is, conformably with that of the Ct. of Ch. that, upon motion for such writ, a *habeas* should issue to the keeper of the Queen's prison to bring up the prisoner, & upon his being present on the day named, that he should be charged accordingly.—*DICKENS v. DICKENS* (1862), 2 Sw. & Tr. 521; 31 L. J. P. M. & A. 59; 6 L. T. 659; 10 W. R. 810; 164 E. R. 1099; *subsequent proceedings* 31 L. J. P. M. & A. 183.

865. ——— **Not where commitment for felony.]**—Deft. in confinement under sentence for felony, cannot be brought up by *habeas corpus* upon an attachment for want of an answer.—*ROGERS v. KIRKPATRICK* (1798), 3 Ves. 573; 30 E. R. 1162, L. C.

866. Application for—Made at chambers.]—*R. v. HOLT*, No. 862, *ante*.

867. ——— **—.]**—An application for a *habeas corpus ad respondendum*, to take a prisoner, in custody on a charge of felony, before justices to answer to another charge of felony, must be made to a judge at chambers & not to the ct.—*ISAACS' CASE* (1851), 2 L. M. & P. 255; *sub nom.* *R. v. ISAACS*, 20 L. J. Q. B. 395; 17 L. T. O. S. 43; 15 J. P. 260.

868. Notice of motion—To Attorney-General.]—On a motion for a *habeas corpus* to be directed to the warden of the Fleet, to bring up the body of a prisoner, who was in execution at the King's suit, in order that he might be charged with an indictment of battery:—*Held*: these motions were never granted without notice given to the A.-G., even in the case where bail would surrender a prisoner.—*ANON.* (1731), 2 Barn. K. B. 114; 94 E. R. 391.

SECT. 4.—AD DELIBERANDUM ET RECIPIAS.

See C. O. R., rr. 229, 230; Central Criminal Court Act, 1856 (c. 16), s. 5; Prison Acts, 1865 (c. 126), ss. 63–65; 1877 (c. 21), s. 28; 1898 (c. 41), s. 11; Criminal Law Amendment Act, 1867 (c. 35), s. 10; Counties of Cities Act, 1798 (c. 52), s. 3.

SECT. 5.—FOR OTHER PURPOSES.

869. To enable prisoners to attend court—To conduct proceedings in person.]—A *habeas corpus* will not be granted, to enable deft. in an information, who is confined in a country gaol, under sentence of another ct. for libel, to attend at Westminster to conduct his defence in person. The application should be made to the ct. by whom deft. was sentenced.—*A.-G. v. HUNT* (1821), 9 Price, 147; 147 E. R. 49.

Annotations:—*Refd.* *Ford v. Nassau* (1842), 9 M. & W. 793; *Benns v. Mosley & Cobbett* (1857), 2 C. B. N. S. 116; *Weldon v. Neal* (1885), 15 Q. B. D. 471.

870. ——— **—.]**—Where deft. charged with selling unstamped papers was in custody, the ct. granted a *habeas corpus* for the purpose of enabling him to defend in person.—*A.-G. v. CLEAVE* (1834), 2 Dowl. 668.

Annotations:—*Refd.* *Benns v. Mosley & Cobbett* (1857), 2 C. B. N. S. 116; *Weldon v. Neal* (1885), 15 Q. B. D. 471.

871. ——— **—.]**—*Pltf.* in lawful custody for debt is not entitled as of right to a writ of *habeas corpus* to bring him up to conduct his cause in person at the trial.—*Ex p. COBBETT* (1858), 3 H. & N. 155; 30 L. T. O. S. 322; 22 J. P. 99; 4 Jur. N. S. 145; 6 W. R. 282; 157 E. R. 425; *sub nom.* *Re COBBETT*, 27 L. J. Ex. 199.

Annotation:—*Refd.* *Weldon v. Neal* (1885), 1 T. L. R. 432.

872. ———.]—The ct. cannot grant a *habeas corpus* to a party to a suit, in custody, to enable him to appear in ct. merely for the purpose of arguing his case in person.—*WELDON v. NEAL* (1885), 15 Q. B. D. 471; 54 L. J. Q. B. 399; 33 W. R. 581; 1 T. L. R. 432, D. C.

873. ———.]—Moving or showing cause against rules.]—The ct. will not grant a *habeas corpus* to bring up a party in custody under an attachment, to enable him to move in person to set it aside.—*FORD v. NASSAU* (1842), 9 M. & W. 793; 1 Dowl. N. S. 631; 11 L. J. Ex. 287; 6 Jur. 374; 152 E. R. 330.

Annotations.—*Reid. Benns v. Mosley & Cobbett* (1857), 2 C. B. N. S. 116; *Weldon v. Neal* (1885), 15 Q. B. D. 471.

874. ———.]—It is entirely in the discretion of a judge, to grant or refuse a *habeas corpus*, to enable a prisoner to attend to show cause against a summons. *Semble*: a special ground should be laid for such an application.—*FORD v. GRAHAM* (1850), 10 C. B. 369; L. M. & P. 604; 138 E. R. 148.

875. ———.]—The cts. have no power to issue writs of *habeas corpus* to bring up prisoners for the purpose of moving for or showing cause against rules, there being no writ known to the law which is applicable to such a purpose.—*BENNS v. MOSLEY & COBBETT* (1857), 2 C. B. N. S. 116; 21 J. P. 662; 140 E. R. 356; *sub nom.* *BINNS v. MOSELEY & COBBETT*, 29 L. T. O. S. 109; 3 Jur. N. S. 694; 5 W. R. 583.

Annotation.—*Foild. Weldon v. Neal* (1885) 15 Q. B. D. 471.

876. ———.]—For identification.]—In case of a question of identity of the person of deft. to an information who is in prison, the ct. will grant a *habeas corpus* to bring him up to be present at the trial at his own expense, & without paying the costs.—*A.-G. v. FADDEN* (1815), 1 Price, 403; 145 E. R. 1413.

Annotations.—*Reid. A.-G. v. Hunt* (1821) 9 Price, 147; *Re Cook* (1845), 7 Q. B. 653; *Weldon v. Neal* (1885), 33 W. R. 581.

877. ———.]—Coroner's inquest.]—*R. v. CONNOR* (1845), 5 L. T. O. S. 20.

878. ———.]—The ct. will not on the mere instance of the coroner, & without a strong case of necessity being made out, issue a writ of *habeas corpus* to bring a prisoner who has been committed for trial on a charge of the murder of A. before a coroner's jury who are sitting on the body of A.—*Re COOK* (1845), 7 Q. B. 653; 14 L. J. M. C. 188; 5 L. T. O. S. 214; 9 J. P. 730; 9 Jur. 869; 115 E. R. 635.

879. ———.]—To be present at hearing.]—To entitle a prisoner to a writ of *habeas corpus* to bring him up to be present on the argument in which he is interested, he must satisfy the ct. that substantial justice cannot be done without his presence.—*CLARK v. SMITH* (1847), 3 C. B. 982; 136 E. R. 394.

Annotation.—*Reid. Re Cobbett* (1858), 27 L. J. Ex. 199.

PART V. SECT. 5.

879 i. *To enable prisoners to attend court—To be present at hearing.*]—The

ct. will not grant *habeas corpus* to issue to enable a party to be present at the hearing of a cause, on the mere allegation that it is material for him to

880. Not to discharge apprentice from indentures.]—*Ex p. GILL*, No. 563, *ante*.

881. Not to enable prisoner to vote at Parliamentary election.]—This ct. will not grant a *habeas corpus* to enable a prisoner, in custody upon a conviction for misdemeanour, to vote at an election of a Member of Parliament.—*Re JONES* (1835), 2 Ad. & El. 436; 111 E. R. 169; *sub nom.* *Ex p. JONES*, 1 Har. & W. 7; 4 Nev. & M. K. B. 340; 4 L. J. K. B. 97.

882. Not to bring up prisoner to be charged with misdemeanour—Prisoner in custody in civil suit—Jurisdiction of Central Criminal Court.]—The judges of the Central Criminal Ct. have no power, as such, to issue any *habeas corpus* or other process, to bring in a party who is in custody of the sheriff of Middlesex, on a civil suit, in order that he may be committed to Newgate, to be tried for a misdemeanour at that ct.; & Central Criminal Ct. Act, 1834 (c. 36), s. 16, does not apply to such a case.—*R. v. MORGAN* (1836), 7 C. & P. 642, C. C. R.

883. Not to inquire into classification of prisoner.]—The ct. will not grant a *habeas corpus* for the purpose of determining whether a person confined in the Queen's prison is subjected to restriction not warranted by 5 & 6 Vict. c. 22, s. 17.—*Ex p. ROGERS* (1843), 2 L. T. O. S. 96; 7 Jur. 992; *sub nom.* *Re ROGERS*, 7 J. P. 689.

884. ———.]—The ct. refused to grant a *habeas corpus* to a prisoner in custody under process out of the Ct. of Ch. applied for on the ground that the keeper of the Queen's prison had improperly removed him to a part of the prison provided for prisoners of a particular class.—*Ex p. COBBETT* (1848), 5 C. B. 418; 130 E. R. 910.

885. To bring up prisoner to be charged in execution—Prisoner in custody under military arrest.]—The ct. cannot grant a *habeas corpus* to bring up deft., who is in custody under military arrest, for the purpose of charging him in execution.—*JONES v. DANVERS* (1839), 5 M. & W. 234; 7 Dowl. 394; 2 Horn & H. 84; 8 L. J. Ex. 216; 3 Jur. 582; 151 E. R. 100.

886. To bring up prisoner for judgment.]—*R. v. ADAMS* (1847), 11 J. P. Jo. 277.

887. To bring up lunatics—To be surrendered in discharge of bail.]—A lunatic may be brought up by *habeas corpus* from hospital to be surrendered in discharge of his bail.—*PILLOP v. SEXTON* (1803), 3 Bos. & P. 550; 127 E. R. 297.

888. ———.]—To be served with writ of summons—If other efforts to serve have failed.]—*Semble*: where all reasonable efforts having been made to effect personal service of a writ of summons on a lunatic in confinement in an asylum, unless the lunatic be in such a state that personal service may injuriously affect his health, the ct. will grant a writ of *habeas corpus* to bring up his body.—*RIDGWAY v. CANNON* (1854), 23 L. T. O. S. 143; 2 W. R. 473.

Annotation.—*Mentd. Holmes v. Service* (1854), 15 C. B. 293.

attend to afford information to his counsel or attorney.—*MAJOR v. BARTON* (1856), 8 Ir. Jur. 468.—*IR.*

Part VI.—Mandamus.

SECT. 1.—THE PREROGATIVE WRIT.

SUB-SECT. 1.—IN GENERAL.

889. Nature of writ.]—(1) The return to a mandamus for restoration to the recordership of B. stated that they did not know that A. was ever elected recorder:—*Held*: the return was bad.

(2) A mandamus does not give any right, but merely restores the party to his old right (*per Cur.*).—*BASSET v. BARNSTABLE CORPN.* (1866), 1 Sid. 286; 82 E. R. 1109.

Annotations:—*As to* (1) *Reid. R. v. Norwich Corpn.* (1706), 2 Ld. Raym. 1244; *R. v. Hertford College* (1878), 3 Q. B. D. 693.

890. —.]—A mandamus is a prerogative writ, to the aid of which the subject is entitled, upon a proper case previously shown, to the satisfaction of the ct. The original nature of the writ, & the end for which it was framed, direct upon what occasions it should be used. It was introduced, to prevent disorder from a failure of justice, & defect of police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, & where in justice & good government there ought to be one. Within the last century, it has been liberally interposed for the benefit of the subject & advancement of justice. The value of the matter, or the degree of its importance to the public police, is not scrupulously weighed. If there be a right, & no other specific remedy, this should not be denied (LORD MANSFIELD, C.J.).

It is a prerogative writ, & shall be granted to amply justice, & to preserve a right, where there is no specific, legal remedy, where no assize will lie (WILMOT, J.).—*R. v. BARKER* (1762), 3 Burr. 1265; 1 Wm. Bl. 352; 97 E. R. 823.

Annotations:—*Reid. R. v. City of London Union, Ex p. London Corpn.* (1907), 76 L. J. K. B. 1087. *Mentd. R. v. Jotham* (1790), 3 Term Rep. 575; *Doe d. Jones v. Jones* (1830), 5 Man. & Ry. K. B. 616; *Re Orton Vicarage* (1849), 13 Jur. 1049; *Collier v. King* (1861), 11 C. B. N. S. 14.

In discretion of court.]—*See Sect. 2, post.*

891. Object of writ.]—When there is no specific remedy, the ct. will grant a mandamus that justice may be done (LORD MANSFIELD, C.J.).—*R. v. BANK OF ENGLAND*, No. 1040, *post*.

892. —.]—This ct., in the exercise of this authority to grant the writ of mandamus, will render it as far as it can the suppletory means of substantial justice in every case where there is no other specific legal remedy for a legal right; & will provide, as effectually as it can, that others exercise their duty wherever the subject-matter is properly within its control. The right of the ct. to apply these means for the attainment of such an end, & to prevent that defect of legal justice which might otherwise ensue, has been in general admitted (LORD ELLENBOROUGH, C.J.).—*R. v. CANTERBURY (ARCHBP.) & LONDON (BP.)* (1812), 15 East, 117; 104 E. R. 789.

Annotations:—*Reid. R. v. Leicester Union*, [1899] 2 Q. B. 632; *R. v. Poplar B. C.* (No. 1), [1922] 1 K. B. 72. *Mentd. A.-G. v. York Archbp.* (1831), 2 Russ. & M. 461; *A.-G. v. Atherstone Free School* (1834), 3 My. & K. 544; *Ferguson v. Kinnoul* (1842), 9 Cl. & Fin. 251; *R. v. Exeter Bp.* (1850), 14 J. P. Jo. 351; *Re Wilkes's Charity* (1851), 3 Mac. & G. 440; *Exeter Bp. v. Marshall* (1868), L. R. 3 H. L. 17; *Hayman v. Rugby School* (1874), L. R. 18 Eq.

PART VI. SECT. 1, SUB-SECT. 1.

889 i. Nature of writ.]—The writ is not invested with any prerogative character in Ontario.—*Re STRATFORD & HURON Ry. Co. & PERTH COUNTY* (1876), 38 U. C. R. 112.—CAN.

889 ii. —.]—A writ of mandamus

is a prerogative writ & not of right.—*R. v. CUNNINGHAM* (1885), 18 L. R. Ir. 373.—IR.

889 iii. —.]—*Mandamus* is in the nature of an execution.—*R. v. MONAGHAN URBAN DISTRICT COUNCIL* (1904), 38 1. L. T. 218.—IR.

891 i. Object of writ.]—A mandamus

28; *R. v. Canterbury Archbp.* (No. 1) (1802), 71 L. J. K. B. 894; *R. v. Liverpool Bp.* (1904), 20 T. L. R. 485; *Cassel v. Ingalls*, [1916] 2 Ch. 211.

893. —.]—That ct. [of Q. B.] has power, by the prerogative writ of mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, & ought to be used when the law has provided no specific remedy, & justice & good government require that there ought to be one for the execution of the common law or the provisions of a statute (MARTIN, B.).—*ROCHESTER CORPN. v. R.* (1858), E. B. & E. 1024; 27 L. J. Q. B. 434; 4 Jur. N. S. 1227; 120 E. R. 791; *sub nom. R. v. ROCHESTER CORPN., Re St. MARGARET & St. NICHOLAS' PARISHES*, 32 L. T. O. S. 31; 22 J. P. 608; 6 W. R. 838, Ex. Ch.; *affg. S. C. sub nom. R. v. ROCHESTER CORPN.* (1857), 7 E. & B. 910.

Annotations:—*Reid. R. v. Hanley Revising Barrister, R. v. Stoke-on-Trent Town Clerk*, [1912] 3 K. B. 518. *Mentd. Seal v. R.* (1857), 27 L. J. Q. B. 139; *R. v. North Hierley Overseers* (1858), E. B. & E. 519; *Hunt v. Hibbs* (1860), 5 H. & N. 123; *Lewis v. Rochester Corpn.* (1860), 9 C. B. N. S. 401; *Christopherson v. Lotinga* (1864), 15 C. B. N. S. 809; *Scott v. Durant* (1865), 18 C. B. N. S. 205; *R. v. Monmouth Corpn., R. v. Bolton Corpn.* (1870), L. R. 5 Q. B. 251; *R. v. Allen* (1872), L. R. 8 Q. B. 69; *R. v. Farquhar* (1874), L. R. 9 Q. B. 258; *Henry v. Armistage* (1882), 48 L. T. 576; *Ex p. Keay* (1891), 56 J. P. 470.

894. —.]—(1) On an application by an administrator for a mandamus to the Comrs. of Inland Revenue to pay to appt. the amount of duty overpaid by him, on the ground that he had supplied evidence of overpayment & had no other legal remedy:—*Held*: the mandamus ought not to issue, for Railway Passenger Duty Act, 1842 (c. 79), s. 23, created no duty between the comrs. & appt., whose remedy, if the decision of the comrs. could be reviewed, was by petition of right.

(2) Where there is no specific remedy & by reason of the want of that specific remedy justice cannot be done unless a mandamus is to go, then a mandamus will go (BRETT, M.R.).

By Magna Carta the Crown is bound neither to deny justice to anybody, nor to delay anybody in obtaining justice. If, therefore, there is no other means of obtaining justice, the writ of mandamus is granted to enable justice to be done (BOWEN, L.J.).—*R. v. INLAND REVENUE COMRS., Re NATHAN* (1884), 12 Q. B. D. 461; 53 L. J. Q. B. 229; 51 L. T. 46; 48 J. P. 452; 32 W. R. 543, C. A.

Annotations:—*As to* (1) *Reid. R. v. Income Tax Comrs., Ex p. Cape Copper Mining Co.* (1888), 57 L. J. Q. B. 513; *R. v. Lambourn Valley Ry.* (1888), 22 Ch. D. 463; *Income Tax Special Purposes Comrs. v. Pemsel*, [1891] A. C. 531. *As to* (2) *Consd. R. v. Lambourn Valley Ry.* (1888), 22 Q. B. D. 463; *R. v. Leicester Union*, [1899] 2 Q. B. 632. *Reid. R. v. Incorporated Law Soc.*, [1895] 2 Q. B. 456; *Peebles v. Oswaldtwistle U. D. C.*, [1897] 1 Q. B. 384; *R. v. St. Giles, Camberwell Vestry* (1897), 61 J. P. 217; *Smith v. Chorley District Council*, [1897] 1 Q. B. 532. *Generally, Mentd. Leakey & Haig v. Dunlinglor* (1891), 65 L. T. 152; *Hollinshead v. Hazleton*, [1916] 1 A. C. 428.

SUB-SECT. 2.—DISCRETION OF COURT TO GRANT.

895. General rule.]—(1) A mandamus to a bishop to license a curate of an augmented curacy,

never issues except to limit or restore a person to an ascertained right.—*Re BARNHART* (1837), 5 O. S. 507.—CAN.

PART VI. SECT. 1, SUB-SECT. 2.

895 i. General rule.]—*Mandamus* may be granted in all cases in which

where there was a cross nomination, was refused because the party had another specific legal remedy by *quare impedit*.

(2) Neither is there any question whether this ct. is bound in point of law to grant a mandamus; but the only question is, whether we will in our discretion grant it, & it seems to me that we are not bound to grant the writ (ASHHURST, J.).—*R. v. CHESTER* (BP.) (1786), 1 Term Rep. 396; 99 E. R. 1158.

Annotations:—*As to* (1) *Reid*. *R. v. Oxford Bp.* (1806), 7 East, 600; *R. v. Severn & Wye Ry.* (1819), 2 B. & Ald. 646; *R. v. Orton Trustees* (1849), 14 Q. B. 139; *M'Allister v. Rochester Bp.* (1879), 49 L. J. Q. B. 114; *R. v. Lambourn Valley Ry.* (1888), 22 Q. B. D. 463. *As to* (2) *Reid*. *R. v. Chichester Bp.* (1859), 2 E. & R. 209; *R. v. Oxford Bp.* (1879), 4 Q. B. D. 245. *Generally*, *Mentd.* *R. v. Canterbury Archbp. & London Bp.* (1812), 15 East, 117.

896. —.]—An application for a mandamus is made to the discretion of the ct., but that discretion must be governed by certain principles. It is never granted merely for asking, some reason must be assigned for it. We would grant the mandamus in order that the right might be tried if there were any ground for it. But here is nothing to be tried. The mandamus is applied for merely to see whether there is anything to be tried or not (ASHHURST, J.).—*R. v. LONDON CORPN.* (1786), 1 Term Rep. 423; 99 E. R. 1174.

897. —.]—The granting of a mandamus lies in the discretion of the ct.—*R. v. DAVIS* (1866), 13 L. T. 629; 14 W. R. 329.

898. —.]—Testator having been admitted to copyhold hereditaments, devised them in fee to two trustees, in trust for the benefit of his family, & he also appointed them guardians to his infant son, his customary heir. The trustees proved the will, but did not claim themselves to be admitted to the copyholds, but called upon the lord of the manor to admit the infant heir by his guardians. The lord refused on account of the devise. If the two devisees had been admitted, the lord would have been entitled to a double fine, instead of a single fine, on the admittance of the heir:—*Held*: a mandamus to compel the lord to admit the heir must be refused, on the ground that it was a matter of discretion &, as the effect of granting the writ would be to enable the trustees to evade payment of a double fine, & to commit a breach of trust by not acquiring themselves the legal estate.

I rest the refusal of the writ entirely on the special circumstances of the case, & on the ground that, in the exercise of that discretion which we have to grant or refuse the extraordinary process of the ct., we ought to refuse it in the present case (COCKBURN, C.J.).—*R. v. GARLAND* (1870), L. R. 5 Q. B. 269; 39 L. J. Q. B. 86; 22 L. T. 160; 18 W. R. 429.

Annotations:—*Distd.* *R. v. Sarum Bp.*, [1916] 1 K. B. 466. *Mentd.* *Ecol. Comrs. for England v. Parr* (1894), 71 L. T. 65; *A.-G. v. Sandover* (1904), 73 L. J. K. B. 478; *Sissons v. Chichester Constable*, [1916] 2 Ch. 75.

899. —.]—A writ of mandamus is a prerogative writ, & not a writ of right, & the granting of it is, in that sense, discretionary. The exercise of this discretion cannot be questioned, but the grant of a prerogative mandamus is a decision upon a right, declaring what is & what is not lawful to be done, & such decision is subject to review.

A writ of mandamus is a prerogative writ & not a writ of right, & it is in this sense in the discretion

of the ct. whether it shall be granted or not. The ct. may refuse to grant the writ not only upon the merits, but upon some delay, or other matter, personal to the party applying for it; in this the ct. exercises a discretion which cannot be questioned. So in cases where the right, in respect of which a rule for a mandamus has been granted, upon showing cause appears to be doubtful, the ct. frequently grants a mandamus in order that the right may be tried upon the return; this also is a matter of discretion. But where the judges grant a prerogative mandamus, which is a determination of the right, & not a mere dealing with the writ, they decide according to the merits of the case, & not upon their own discretion, & their judgment must be subject to review, as in every other decision in actions before them (LORD CHELMSFORD).

Upon a prerogative writ there may arise many matters of discretion which may induce the judges to withhold the grant of it, matters connected with delay, or possibly with the conduct of the parties (LORD HATHERLEY).—*R. v. ALL SAINTS, WIGAN CHURCHWARDENS* (1876), 1 App. Cas. 611; 35 L. T. 381; 41 J. P. 132; 25 W. R. 128, H. L.; *affg.* *S. C. sub nom.* *R. v. WIGAN* (1874), L. R. 9 Q. B. 317, Ex. Ch.

Annotations:—*Reid.* *R. v. Maidenhead Corpn.* (1882), 9 Q. B. D. 494; *R. v. Poplar B. C.* (No. 1), [1922] 1 K. B. 72. *Mentd.* *R. v. Bishop Wearmouth Burial Board* (1879), 5 Q. B. D. 67.

900. —.]—(1) The words in a statute "it shall be lawful" of themselves merely make that legal & possible which there would, otherwise, be no right or authority to do. Their natural meaning is permissive & enabling only. But there may be circumstances which may couple the power with a duty to exercise it. It lies upon those who call for the exercise of the power to show that there is an obligation to exercise it.

On a motion to the Q. B. Division a mandamus was granted requiring a bishop to issue a commission under Church Discipline Act, 1840 (c. 80), s. 3, or to send the case by letters of request to the Ct. of Appeal of the province as provided by s. 13 of the Act. The rule having been reversed in the Ct. of Appeal:—*Held*: s. 3 gave the bishop complete discretion to issue or decline to issue such commission.

(2) At common law the prerogative writs of mandamus, prohibition & *certiorari* were not writs of course. The ct., when called on to issue them, always exercised a discretion (LORD BLACKBURN).—*JULIUS v. OXFORD* (LORD BP.) (1880), 5 App. Cas. 214; 49 L. J. Q. B. 577; 42 L. T. 546; 44 J. P. 600; 28 W. R. 726, H. L.; *affg.* *S. C. sub nom.* *R. v. OXFORD* (BP.) (1870), 4 Q. B. D. 525, C. A.

Annotations:—*As to* (1) *Reid.* *Abergavenny v. Llandaff Bp.* (1888), 20 Q. B. D. 460; *Allcroft v. London Bp.*, *Lighton v. London Bp.*, [1891] A. C. 666. *Generally*, *Mentd.* *S. E. Ry. v. Railway Comrs. & Hastings Corpn.* (1880), 50 L. J. Q. B. 201; *Fleming v. Manchester Corpn.* (1881), 44 L. T. 517; *R. v. Barclay* (1881), 8 Q. B. D. 306; *Serjeant v. Dale, Ex p. Dale, Perkins v. Enraght, Ex p. Enraght* (1881), 43 L. T. 769; *Loosemore v. Tiverton & Exeter Devon Ry.* (1882), 22 Ch. D. 25; *Central Wales & Carmarthen Junction Ry. v. L. & N. W. Ry.*, & *G. W. Ry.* (1883), 4 Ry. & Can. Tr. Cas. 211; *Dormont v. Furness Ry.* (1883), 11 Q. B. D. 490; *Leduc v. Ward* (1886), 54 L. T. 214; *R. v. Bloomsbury County Court Judge* (1886), 2 T. L. R. 665; *Re Baker, Nichols v. Baker* (1890), 44 Ch. D. 262; *Pure Spirit Co. v. Fowler* (1890), 25 Q. B. D. 235; *R. v. St. Pancras Vestry* (1890), 62 L. T. 440; *Emmott v. Star Newspaper Co.* (1892), 9 T. L. R. 111; *Hakes v. Cox*, [1892] P. 110; *Kirkheaton District L. B. v. Ainley*, [1892] 2 Q. B. 274; *Thames Conservators v. Port of London Sanitary Authority*, [1894] 1 Q. B. 647; *Russell v. Russell*, [1895] P. 315; *R. v. Turner*, [1897] 1 Q. B.

it shall appear to the ct. to be just & convenient.—*METTERELL v. BRITISH COLUMBIA MEDICAL COUNCIL* (1892), 2 B. C. R. 186.—CAN.

895 II. —.]—*Mandamus* is not de-

mandable as of right, but may be issued or withheld in the discretion of the ct.—*PETTIGREW v. BAILLARGE* (1901), Q. R. 20 S. C. 173.—CAN.

895 III. —.]—(1) A *mandamus* in a civil matter is in the discretion of the ct.—*R. v. NEWBY URBAN DISTRICT COUNCIL* (1909), 43 I. L. T. 172.—IR.

Sect. 1.—The prerogative writ: Sub-sect. 2 & 3, A.]

445; *Re Knight*, [1898] 1 Ch. 257; *Southwark & Vauxhall Water Co. v. Wandsworth Board of Works*, [1898] 2 Ch. 603; *R. v. Locke*, [1910] 2 K. B. 201; *Golden Horsehoe Estates Co. v. The Crown*, [1911] A. C. 480; *R. v. Metropolitan Police Comrs.*, *Ex p. Holloway*, [1911] 2 K. B. 1131; *R. v. Mitchell, Ex p. Livesey*, [1913] 1 K. B. 561; *R. v. Marshland Smeech & Fen District Comrs.*, [1920] 1 K. B. 155.

901. —.]—Whenever a public body or officer fails to discharge a legal duty the ct. has power to command them or him by mandamus to discharge it, but in the exercise of its discretion it will not so command them or him if appct. for the mandamus has another remedy by legal process, equally convenient, beneficial & effectual.

By Vaccination Act, 1871 (c. 98), s. 5, there is a statutory duty placed on the guardians of the poor to appoint a vaccination officer, & the fact that, on their failure to do so, the Local Govt. Board may appoint is not such an alternative remedy as to preclude the Local Govt. Board from obtaining a mandamus to compel the guardians to appoint.

A writ of attachment will issue for failure to obey a peremptory mandamus even when such failure is in no way intended to be disrespectful to the ct.

It must be remembered that this prerogative writ of mandamus is in the discretion of the ct. It is true that, in the past, the ct. has laid down certain rules for future guidance, according to which it will or will not grant this writ. It must, however, be remembered that it by no means follows that, because the ct. has in many cases refused to grant the writ, it had not power to do so within the rules which govern its action. The ct. may well have the power, but in a particular case may think that it is not advisable to grant a writ of mandamus, which is discretionary (*DARLING, J.*).—*R. v. LEICESTER UNION*, [1899] 2 Q. B. 632; 68 L. J. Q. B. 945; 81 L. T. 559; 15 T. L. R. 511; 43 Sol. Jo. 691, D. C.

Annotations:—Held. R. v. Christ's Hospital, Ex p. Dunn, [1917] 1 K. B. 19; *R. v. Poplar B. C. (No. 1)*, [1922] 1 K. B. 72; *R. v. Woolwich B. C., Ex p. Woolwich Union Guardians* (1922), 20 L. G. R. 820.

902. —.]—Special expenses for drainage works were incurred by plffs. upon terms, the result of which was that money was due each year from defts. to plffs., & the amount so due was recoverable by defts. from three contributory parishes for whose benefit the special expenses were incurred. By mistake plffs. did not for several years call upon defts. to pay the full amount properly due, & less was paid till Sept., 1904. In Apr., 1905, plffs. drew attention to the mistake & called upon defts. to pay the balance due in respect of several previous years up to Sept., 1904, & to make payment for the future on a proper footing. Defts. paid on the lower scale till Sept., 1905, & thenceforward paid in full. They were unable to recover part of the arrears from the contributory parishes & declined to pay the arrears; whereupon plffs. brought an action to recover the arrears & for a mandamus to enforce the levy of a rate to satisfy them. Defts. admitted that plffs. were entitled to judgment for the arrears, but contended that a mandamus to enforce payment of a retrospective rate would be

illegal:—*Held*: the ct. had a discretion to grant a mandamus for enforcing the levying of a rate to meet obligations for special expenses of former years if the circumstances justified it.—*CROYDON CORPN. v. CROYDON RURAL COUNCIL*, [1908] 2 Ch. 321; 77 L. J. Ch. 800; 99 L. T. 180; 72 J. P. 309; 24 T. L. R. 740; 6 L. G. R. 1087, O. A.

Annotation:—Mentd. Wolstanton United U. C. v. Tunstall U. C., [1910] 2 Ch. 347.

903. Exercise of discretion.—Where right doubtful—Public or private office.—*R. v. LONDON CORPN.* (1733), 2 Term Rep. 182, n.; 2 Barn. K. B. 898; 100 E. R. 98.

904. —.]—The ct. will issue a mandamus, though, upon an application for a rule to show cause, it appears doubtful whether the party asking for the mandamus has a right or not, in order that the right may be tried upon the return.—*R. v. BLAND* (1741), Bull. N. P. 7th ed. 200 b.

905. —.]—Holding court leet.—A corpn. had, from time immemorial, been the lords of the manor & owners of the Guildhall within the borough, & had, by a charter of Queen Mary, granted to them a right to hold a ct. leet & view of frankpledge for the manor every year in the Guildhall. By an inclosure Act, the manor, with its rights, was awarded to H. with an exception to the corpn. of the Guildhall, & H., for several years afterwards, held the cts. in the Guildhall. H. having been obstructed from entering that place:—*Held*: although some doubts existed as to the right of H. to hold the cts. in the Guildhall, yet a mandamus would be granted to bring the question fully before the ct.—*R. v. LICHETER CORPN.* (1823), 2 Dow. & Ry. K. B. 724; 1 L. J. O. S. K. B. 173; *subsequent proceedings* (1824), 2 B. & C. 764.

906. —.]—Issue of summons by magistrate.—It is so doubtful whether a magistrate has jurisdiction, under London Hackney Carriage Act, 1831 (c. 22), s. 51, & 1 & 2 Vict., c. 79, to grant a summons against a railway officer for depriving a cabman of his fare, & obstructing him, by refusing him permission to enter within the courtyard, that the ct. will refuse to grant a mandamus commanding the magistrate to issue a summons to hear & determine the complaint.—*R. v. RAWLINSON* (1844), 2 L. T. O. S. 354; 8 J. P. 212; 8 Jur. 108.

907. —.]—*R. v. ALL SAINTS, WIGAN (CHURCHWARDENS)*, No. 899, *ante*.

908. —.]—Where order not for public benefit.—By a local Act for better governing the parish of P., it was enacted, that no road which had not been repaired by the parish should be repaired out of the parochial funds, until such road should have been surveyed by two surveyors, & certified by them to have been properly formed, one of the surveyors to be appointed by the vestry, & one by the freeholder or his lessee. A road had been set out by the proprietors for the purpose of letting the frontage of 5,660 feet as building ground. Eight houses had been built, & were inhabited, & twenty-six carcasses had been erected. The road had been formed & used by the public for six months, & the freeholder & his lessee had appointed a surveyor,

d. Exercise of discretion.—Where grant would be mischievous.—Or opposed to established policy.—The ct. is bound in the exercise of its discretion to refuse to grant a writ of mandamus in favour of a person having a strict legal right, when its granting will prove mischievous & he opposed to a well-established policy.—*Ex p. WALLACE & Co.* (1892), 13 N. S. W. L. R. 1; 8 N. S. W. N. 90.—*AUS.*

e. — Where evidence of bribery.—

A mandamus should not be granted where bribery or corruption has been brought home to appct.—*Re LANGDON & ARTHUR JUNCTION RY. CO. & ARTHUR TOWNSHIP* (1880), 45 U. C. R. 47.—*CAN.*

f. — Where alternative remedy.—A mandamus ought not to be granted where another remedy is provided, which is not less convenient, beneficial & effectual.—*R. v. DEER*, [1919] 1 W. W. R. 410.—*CAN.*

g. — Where amount in question very small.—The prerogative powers of the ct. should not be invoked by way of mandamus for a very small sum.—*Re MORRISON* (1907), 6 W. L. R. 608.—*CAN.*

h. Discretion not interfered with on appeal.—Discretion could not be questioned.—*R. v. DARTMOUTH TOWN WARDEN & COUNCIL* (1882), 9 S. C. R. 509; 1 R. & G. 402.—*CAN.*

& required the vestry to appoint one, which they refused to do:—*Held*: the ct., in the exercise of its discretion, would not grant a mandamus to the vestry to compel them to appoint a surveyor, inasmuch as such appointment would have the effect of throwing on the parish the burden of repairing a road which would be not so much for the benefit of the public as for the peculiar benefit of the freeholder during the time his buildings were erecting.—*R. v. PADDINGTON VESTRY* (1829), 9 B. & C. 456; 8 L. J. O. S. M. C. 4; 109 E. R. 170.

909. ———.]—The local authority of a district in which the Private Streets Works Act, 1892 (c. 57), had been adopted & to which Public Health Acts Amendment Act, 1907 (c. 53), s. 19, had been applied, served notice to repair a road under that sect. on the persons whom they understood to be the owners of the adjoining premises. The local authority withdrew their original notice, being satisfied that it would be unwise to make up the road in a permanent manner as damage would be done to it by building operations. It also appeared that some of the owners of adjoining premises had not been served with the original notice, & no notice had been affixed to the land. On an application for a mandamus to the local authority to proceed under the Act of 1892:—*Held*: the ct. would not grant a mandamus to the local authority.

When all those matters are looked at, it seems to me impossible to say that it would be any benefit, or anything but injury, to the persons on whose behalf, or for whose benefit, these powers are conferred, namely, the ratepayers of the district, to order the urban district council to go on with what they proposed to do when they passed their resolution in the first instance. I agree, therefore, that this is not a case in which, in the discretion of the ct., any mandamus ought to be granted (*PICKFORD, J.*).—*R. v. EPSOM URBAN DISTRICT COUNCIL, Ex p. COURSE* (1912), 76 J. P. 389; 10 L. G. R. 609, D. C.

910. ———.]—*To enforce committal.*—A party convicted in a penalty, under a statute awarding imprisonment if the penalty were not paid, refused to pay, & threatened to proceed against the justices under Habeas Corpus Act, 1679 (c. 2), s. 6, if they committed him, alleging that he had before been committed under conviction for the same offence, & discharged on *habeas corpus*. The justices then refused to commit, but stated their willingness to enforce the penalty if directed to do so by this ct. On motion for a mandamus to the justices to issue a warrant of commitment:—*Held*: this ct., in the exercise of its discretion, would not interfere, though it was suggested that the former discharge had been for a defect in the warrant of commitment.—*Re WILLIAMS* (1817), 9 Q. R. 976; 2 New Sess. Cas. 570; 115 E. R. 1548; *sub nom. R. v. FLINTSHIRE JJ.*, 11 J. P. Jo. 85.

911. ———.]—*Where applicant has taken remedy in own hands.*—*R. v. ST. LEONARDS, SHOREDITCH VESTRY* (1856), 27 L. T. O. S. 171, 185; 20 J. P. Jo. 404.

912. ———.]—Where a person has erected a building contrary to London Building Act, 1894 (c. cxxiii.), s. 13, the ct. will not grant a mandamus to compel the council to hear & determine an application for consent under s. 13 (4), after such unlawful erection.—*R. v. LONDON COUNTY COUNCIL*

(1897), 66 L. J. Q. B. 516; 76 L. T. 472; 61 J. P. 439; 45 W. R. 605; 13 T. L. R. 391; 41 Sol. Jo. 509, D. C.

913. ———.]—*Proceedings necessary.*—*Re BENNETT, Ex p. SHEPHERD* (1869), 33 J. P. Jo. 203.

914. ———.]—*Where no wrong to remedy.*—A town council, upon insufficient grounds, & by an illegal mode, passed a resolution removing an alderman & declaring his office void. At the next meeting the council formally rescinded their previous resolution. The alderman obtained a rule for a mandamus to the corp. to restore him, on the ground that he might be liable to proceedings, if he continued to act merely upon the rescission of the resolution:—*Held*: the corp. had done all they could do, & there was no wrong which the mandamus could remedy.—*R. v. RYDE CORPN.* (1873), 28 L. T. 629; 37 J. P. 725.

Annotation:—*Mentd.* *Booth v. Arnold*, [1895] 1 Q. B. 571.

915. ———.]—*Vexatious proceedings.*—*Ex p. LLOYD* (1889), 53 J. P. 612; 5 T. L. R. 180, D. C.

916. *Discretion not ousted by agreement of parties.*—When a special case is stated for the opinion of the ct., & the parties agree that, in the event of the ct. giving judgment for plff., a mandamus may issue against deft.:—*Held*: this must be understood to mean if the ct. thinks fit that it should do so.—*NICHOLL v. ALLEN* (1882), 1 B. & S. 916; 31 L. J. Q. B. 283; 6 L. T. 699; 10 W. R. 741; 121 E. R. 954, Ex. Ch.

Annotations:—*Refd.* *Guest v. Pool & Bournemouth Ry.* (1870), L. R. 5 C. P. 553; *R. v. Maldenhead Corp.* (1882), 51 L. J. Q. B. 444. *Mentd.* *Winch v. Thames Conservators* (1872), L. R. 7 C. P. 458.

SUB-SECT. 3.—CONDITIONS PRECEDENT TO ISSUE.

A. Application must be bonâ fide.

917. *General rule.*—Upon an application for a writ of mandamus the affidavits must show who is the real appct. & that he is a party *bonâ fide* interested in the subject-matter of the application.—*R. v. PETERBOROUGH CORPN.* (1875), 44 L. J. Q. B. 85; 23 W. R. 313.

Annotation:—*Refd.* *R. v. Harding* (1890), 6 T. L. R. 175.

918. *Collusive application*—*To obtain opinion of court.*—In a case in which by agreement between the parties an application was made for a mandamus, merely with a view to obtain the opinion of the ct. whether on the construction of a private Act the proceeding by mandamus was the proper one, the ct. stopped the argument & refused to give any decision.—*R. v. BLACKWALL RAILWAY (DIRECTORS)* (1841), 9 Dowl. 558.

919. *Writ sought for ulterior motive.*—Where, after a co. had virtually abandoned its project, & its compulsory powers had expired, & a small sum only remained in hand, shares had been transferred, a mandamus was refused to register the transfer of the shares, the ct., upon the facts, entertaining the opinion that the purchaser was desirous of having the transfer registered, not for the *bonâ fide* purpose of becoming the proprietor of the shares, but with the object of opposing the co. & assisting the purchaser's father, who had instituted proceedings in equity against the co.—*R. v. LIVERPOOL, MANCHESTER & NEWCASTLE-UPON-TYNE RY. CO.* (1852), 21 L. J. Q. B. 284; 19 L. T. O. S. 108; 16 Jur. 949.

Annotation:—*Distd.* *R. v. Wilts & Berks Canal Navigation* (1874), 29 L. T. 922.

PART VI. SECT. 1, SUB-SECT. 3.—A.

917 i. *General rule.*—The ct. will not grant a mandamus if the party seeking the relief is not acting in good

faith.—*MANNING v. BERGMAN* (1915), 32 W. L. R. 619; 9 W. W. R. 220; 25 D. L. R. 797.—*CAN.*

917 ii. ———.]—An application for a

mandamus must be made in good faith & not for an indirect purpose.—*OYEN SCHOOL DISTRICT TRUSTEES v. BOYLE* (1917), 2 W. W. R. 313; 11 Alta. L. R. 280.—*CAN.*

Sect. 1.—The prerogative writ: Sub-sect. 3, A. & B. (a).]

920. —[—]—A firm of solrs. claimed to be allowed as the agents of a ratepayer to inspect the books & accounts of the urban district council, who were the burial board for the district. The board refused on the ground that the application was not *bonâ fide*, but made for the purpose of obtaining information to be used in some proceedings which were pending between the board & other clients of the solrs. On the argument for a mandamus:—*Held*: the application must be refused, as it was made for an indirect purpose.—*R. v. WIMBLEDON URBAN DISTRICT COUNCIL, Ex p. HATTON* (1897), 77 L. T. 599; 62 J. P. 84; 14 T. L. R. 140, D. C.

B. Legal Right or Duty to be enforced.

(a) In General.

921. General rule.—[We would grant the mandamus in order that the right might be tried if there were any ground for it. But here is nothing to be tried. The mandamus is applied for merely to see whether there is anything to be tried or not (*ASHHURST, J.*).—*R. v. LONDON CORPN.*, No. 896, ante.

922. —[—]—(1) Two circumstances must concur to authorise the issuing of a mandamus, a specific legal right, & the absence of an effectual remedy.

(2) If it be doubtful whether there be a remedy, the ct. will issue a mandamus.—*R. v. NOTTINGHAM OLD WATER WORKS CO.* (1837), 6 Ad. & El. 355; 1 Nev. & P. K. B. 480; Will. Woll. & Dav. 166; 6 L. J. K. B. 89; 1 J. P. 244; 1 Jur. 54; 112 E. R. 135; *subsequent proceedings, sub nom. Ex p. TURNER* (1838), 1 Will. Woll. & H. 305.

923. —[—]—A rule *nisi* for a mandamus will not be granted where it appears that appcts. have no legal right.—*Ex p. GREAT YARMOUTH CORPN.* (1841), Woll. 166; 5 J. P. 421; 5 Jur. 652.

924. —[—]—The writ of mandamus is the proper remedy, where there is a legal right, & the law affords no other sufficient legal remedy (*LORD CAMPBELL, C.J.*).—*R. v. COPPER MINERS OF ENGLAND CO.* (1850), 16 L. T. O. S. 148.

925. —[—]—The existence of a legal right or objection is the foundation of every writ of mandamus (*LORD CAMPBELL, C.J.*).—*Ex p. NAPIER* (1852), 18 Q. B. 692; 21 L. J. Q. B. 332; 17 Jur. 380; 118 E. R. 261; *sub nom. R. v. EAST INDIA CO., Ex p. NAPIER*, 19 L. T. O. S. 214.

Annotations:—*Consd. R. v. Secretary of State for War*, [1891] 2 Q. B. 326. *Refd. Grant v. Secretary of State for India* (1877), 2 C. P. D. 445.

926. No obligation imposed by statute.—*YORK & NORTH MIDLAND RY. CO. v. R.*, No. 927, *post*.

927. —[—]—**To make railway.**—An Act for making a railway recited that the formation of the railway would be beneficial to the public, & that the co. were willing to execute it. The power of compulsorily taking lands, with the then ordinary powers, was given to the co. A mandamus issued, commanding the co. to complete the line:—*Held*: the mandamus ought not to go, no duty being cast on the co. to make the line, the words of the Act being enabling, not obligatory.—*YORK & NORTH MIDLAND RY. CO. v. R.* (1853), 1 E. & B. 858; 7 Ry. & Can. Cas. 459; 22 L. J. Q. B. 225; 21 L. T. O. S. 116; 17 Jur. 690; 1 W. R. 358; 1 C. L. R. 119; 17 J. P. Jo. 309; 118 E. R. 657,

Ex. Ch.; *reusg. S. C. sub nom. R. v. YORK & NORTH MIDLAND RY. CO.* (1852), 1 E. & B. 178.

Annotations:—*Appld. G. W. Ry. v. R.* (1853), 1 E. & B. 874. *Consd. R. v. French* (1879), 4 Q. B. D. 507; *R. v. G. W. Ry.* (1893), 62 L. J. Q. B. 572. *Refd. Morgan v. Parry* (1856), 17 C. B. 334. *Mentd. R. v. Ambergate, etc. Ry.* (1853), 20 L. T. O. S. 246; *Astley v. M. S. & L. Ry.* (1858), 2 De G. & J. 453; *Scottish N. E. Ry. v. Stewart* (1859), 33 L. T. O. S. 307; *Ioberts v. Roberts* (1862), 3 B. & S. 183; *Tamar Manure Navigation Co. v. Wagstaffe* (1863), 4 B. & S. 288; *Forbes v. Lee Conservancy Board* (1879), 48 L. J. Q. B. 402; *Julius v. Oxford Bp.* (1880), 5 App. Cas. 214; *Swansea Improvements & Tram. Co. v. Swansea & Mumbles Ry.* (1880), 3 Ry. & Can. Tr. Cas. 339; *S. E. Ry. v. Railway Comrs. & Hastings Corp.* (1881), 3 Ry. & Can. Tr. Cas. 464; *Darlington L. B. v. L. & N. W. Ry.*, [1894] 2 Q. B. 694; *R. v. Turner & Hodgson* (1897), 76 L. T. 556; *A.-G. v. Simpson*, [1901] 2 Ch. 671.

928. —[—]—(1) The G. W. Ry. Extension Act, 1847 (c. ccxxvi.), s. 11, enacted that it shall be lawful for the co. to make a branch railway, " & if they should think fit," the diverging lines shown on the plans, from the branch railway to various collieries, & also to widen & enlarge the G. W. Ry.:—*Held*: the stat. did not cast upon the co. the duty to make the branch railway, & therefore a mandamus would not lie.

(2) When it appears on the return that the period for the exercise of the compulsory powers has expired, a peremptory mandamus will not be awarded.—*GREAT WESTERN RY. CO. v. R.* (1853), 1 E. & B. 874; 17 Jur. 695; 2 W. R. 54; 118 E. R. 663, *Ex. Ch.*; *reusg. S. C. sub nom. R. v. GREAT WESTERN RY. CO.* (1852), 1 E. & B. 253.

Annotations:—*As to* (1) *Refd. Shaokell v. West* (1859), 2 E. & B. 326; *Forbes v. Lee Conservancy Board* (1879), 48 L. J. Q. B. 402. *Generally, Mentd. Weld v. L. & S. W. Ry.* (1863), 1 New Rep. 415.

929. —[—]—**To re-open closed railway station.**—*Re TAFF VALE RY. CO.* (1855), 19 J. P. Jo. 773.

930. —[—]—**To reinstate railway.**—By a private Act the G. W. Ry. Co. obtained power to purchase compulsorily a railway which had been made privately without the sanction of Parliament. By sect. 18 the maintenance of the railway in question & the sidings & workings connected therewith was thereby sanctioned, & the railway for all purposes was to be deemed to be part of the G. W. Railway system. Under the land over which the railway ran was a valuable deposit of clay, which was reserved to the owners of the land upon the sale of the land to the railway co. The owners gave the railway co. notice, under Railways Clauses Consolidation Act, 1845 (c. 20), s. 79, of their intention to work the clay lying under & within forty yards of the railway, & the railway co. not having elected to purchase it under sect. 78, they proceeded to work it according to the usual manner of working in the district, namely, by open quarrying. The result of so working it was to let down the railway. The railway co. having refused to reinstate the railway, the owners of the clay, who mainly used the railway for the conveyance over it of the clay, applied for a mandamus to the railway co. to reinstate it so that it might be available for traffic:—*Held*: the provisions of the private Act being merely enabling, & not imperative, the railway co. were under no obligation either to maintain or to reinstate the railway, & consequently a mandamus to compel them to reinstate it could not be granted.—*R. v. GREAT WESTERN RY. CO.* (1893), 62 L. J. Q. B. 572; 69 L. T. 572; 9 T. L. R. 573; 37 Sol. Jo. 669; 9 R. 1, C. A.

Annotations:—*Refd. Darlington L. B. v. L. & N. W. Ry.*, [1894] 2 Q. B. 694. *Mentd. A.-G. v. Simpson*, [1901] 2 Ch. 671.

See, further, RAILWAYS & CANALS.

PART VI. SECT. 1, SUB-SECT. 3.—B. (a).

k. To prevent failure of justice.—[The ct. is bound to grant a mandamus when satisfied that there will be a failure of justice unless it is granted.—*R. v. ROGERS* (1869), 6 W. W. & A'B. 138.—**AUS.**

931. — On Postmaster-General.]—A vestry applied by mandamus to compel the Postmaster-General to pay poor rates upon the ratable value of telegraph posts & wires, as fixed by an assessment committee. The Postmaster-General had tendered a smaller amount, proportionate to an assessment fixed by the Comrs. of the Treasury, which the vestry had refused:—*Held*: by Telegraph Acts, 1868 (c. 110) & 1869 (c. 73), no duty was cast upon the Postmaster-General to pay the rates imposed by those Acts, & there was no remedy by mandamus against him to enforce the payment of rates fixed by an assessment committee.—*R. v. POSTMASTER-GENERAL* (1873), 28 L. T. 337; *sub nom. MARYLEBONE VESTRY v. POSTMASTER-GENERAL*, 37 J. P. 196; 21 W. R. 450.

See, further, RATES & RATING; TELEGRAPHS & TELEPHONES.

932. — On local board to enforce order of justices.]—A private person obtained an order of justices on another to cleanse a drain, & afterwards applied to the local board to enforce the same under Nuisances Removal Act, 1855 (c. 121), s. 14, by entry on the premises & cleansing the drain, or otherwise:—*Held*: the party obtaining the order was not entitled to a mandamus to the local board on a mere statement that they had refused to act in the matter.

You must contend that any private person may compel the local board to remove or abate anything which he can make out to be a nuisance & that the board has no discretion whether it will act or not (*CHROMPTON, J.*).—*R. v. HAM LOCAL BOARD OF HEALTH* (1857), 28 L. T. O. S. 267.

933. — On Income Tax Commissioners—To state case or hear appeal.]—The special comrs. on an appeal, being dissatisfied with the sched. produced by applt., declined to require him to verify such sched. on oath under Income Tax Act, 1842 (c. 35), s. 122, & confirmed the assessment made by the additional comrs. Applt. required them to state a case, but they declined to do so, on the ground that no point of law was involved. Applt. obtained a rule *nisi* for a mandamus, calling upon the comrs. to state a case or hear his appeal:—*Held*: if there was any point of law involved, it was not one on which a mandamus should issue, the comrs. not being bound to put applt. upon oath.—*R. v. CHEW* (1894), 71 L. T. 541; 11 T. L. R. 1; 39 Sol. Jo. 8; 14 R. 74; *sub nom. R. v. INCOME TAX SPECIAL COMRS., Re FLETCHER*, 59 J. P. 356; 3 Tax Cas. 289, C. A.; *affg. S. C. sub nom. R. v. CHEW, Ex p. FLETCHER*, 10 T. L. R. 612, D. C.

934. — To build a bridge over public footpath.]—Railways Clauses Consolidation Act, 1845 (c. 20), s. 46, does not impose upon a ry. co. whose line crosses a public footpath the obligation of carrying the footpath over the railway or the railway over the footpath by means of a bridge.

There being no obligation (to build a bridge over a footpath) to be found, no mandamus can be issued to command the ry. co. to do that which they are not bound to do under these Acts of Parliament (*LORD HALSBURY, C.*).—*DARTFORD RURAL DISTRICT COUNCIL v. BEXLEY HEATH RY. CO.*, [1898] A. C. 210; 67 L. J. Q. B. 231; 77 L. T. 601; 62 J. P. 227; 46 W. R. 235; 14 T. L. R. 91, H. L.

Annotation:—*Mentd. G. & S. W. Ry. v. Ayr Corpn.*, [1912] A. C. 520.

935. — On county council—To pay expenses of maintenance of troops—Brought into county to suppress riots.]—Troops were brought into a county, on the application of the county magistrates, for the purpose of suppressing riots, &

preserving peace & order in the county. By agreement with the magistrates certain tradesmen supplied the troops with food & lodging while quartered in the county. On an application for a mandamus to the county council to pay for the food & lodging supplied:—*Held*: no duty was imposed by law on those who administered the county funds to pay the expenses of the maintenance of the troops, & a mandamus could not be granted.—*R. v. GLAMORGAN COUNTY COUNCIL*, [1899] 2 Q. B. 530; 68 L. J. Q. B. 1047; 81 L. T. 372; 64 J. P. 115; 48 W. R. 112; 15 T. L. R. 538, C. A.

Annotation:—*Mentd. Glamorgan Coal Co. v. Glamorganshire Standing Joint Committee, Powell Duffryn Steam Coal Co. v. Same*, [1915] 1 K. B. 471.

See, further, LOCAL GOVERNMENT.

936. — Military Service Act, 1916.]—In the case of an attested man, who does not come under Military Service Act, 1916 (c. 101), the ct. will not issue to an appeal tribunal appointed by the Local Govt. Board to assist the military authorities, a mandamus to take the steps prescribed by the directions issued to such tribunals by the board, as the tribunals so appointed do not act, in the case of attested men, in pursuance of any statutory authority.—*Ex p. MANN* (1916), 32 T. L. R. 479, D. C.

See, further, ROYAL FORCES.

937. No right conferred by statute—Mandamus to improvement commissioners to approve plans.]—*R. v. LLANDUDNO IMPROVEMENT COMRS.* (1892), 56 J. P. Jo. 85; *sub nom. Re LLANDUDNO IMPROVEMENT COMRS.*, 36 Sol. Jo. 234, D. C.

938. No vested right—Naval officers half-pay.]—Deductions having been made from a naval officer's half-pay in pursuance of a general order from the Admty., application was made on his behalf to have the amount of such deductions restored, & the Lords of the Admty. stated, in answer, that they had given directions for restoring it. Afterwards they retracted this consent, giving as a reason that it would subject them to many similar applications. After the officer's death his administratrix moved for a mandamus to the Lords of the Admty. to restore the deducted sums, on the ground that they had admitted the right to them & the possession of applicable funds:—*Held*: there was no vested right in the half-pay, entitling the administratrix to a mandamus.—*Ex p. RICKETTS* (1836), 4 Ad. & El. 999; 111 E. R. 1059; *sub nom. Re MANDAMUS, APPLICATION FOR, TO LORDS OF ADMIRALTY, Ex p. RICKETTS*, 6 Nev. & M. K. B. 523.

Annotations:—*Reid. Re De Bode* (1838), 6 Dowl. 776; *Williams v. Admiralty Lords Comrs.* (1851), 17 L. T. O. S. 200. *Mentd. R. v. Treasury Lords Comrs., Re Queen Dowager's Annuity* (1851), 15 Jur. 767.

939. — Superannuation allowance.]—A party to whom a superannuation allowance has been granted in pursuance of a Treasury minute, according to 50 Geo. 3, c. 117, in respect of an office held during pleasure, has no vested interest in such allowance, but the minute may be revoked at will by the Lords of the Treasury.

Where a Treasury minute had been revoked under the above circumstances the ct. refused a mandamus calling on the Lords of the Treasury to restore such minute to their books, & to submit an application to Parliament, in the estimates for the current year, for a grant on account of the allowance sanctioned by such minute.—*Re SMYTH, R. v. TREASURY LORDS COMRS.* (1836), 4 Ad. & El. 976; 6 Nev. & M. K. B. 505; 111 E. R. 1050.

Annotations:—*Reid. Re Hand, R. v. Treasury Lords Comrs.* (1836), 4 Ad. & El. 984; *Re De Bode* (1838), 6 Dowl. 776; *Ex p. Napier* (1852), 18 Q. B. 692.

940. No existing rights—When mandamus

Sect. 1.—The prerogative writ: Sub-sect. 3, B. (a) (b), C.]

applied for.]—An appeal against a licence granted by the magistrates of a borough having been dismissed by the recorder, the Ct. of Q. B. refused to grant a rule for a mandamus commanding him to hear the appeal, the period for which the licence had been granted having expired before the rule for the mandamus had been applied for.—R. v. BIRMINGHAM (RECORDER) (1855), 24 L. T. O. S. 256; 3 W. R. 236; 19 J. P. Jo. 99.

*941. Company purporting to acquire right by ultra vires advance of money.]—The tenant for life had added to the mansion house, & obtained an order from the inclosure comrs. charging the expense on the inheritance. The L. co. having power to lend money on land for improvements, but not for building mansions, sought from the comrs. an order creating a first charge on the inheritance in order to advance money for the mansion house expenditure:—*Held*: a mandamus did not lie to the comrs. & especially at the instance of a co. having no power to lend the money for such a purpose.—*Re INCLOSURE COMRS., Ex p. LANDS IMPROVEMENT CO.* (1879), 41 L. T. 407; *sub nom. R. v. INCLOSURE COMRS.*, 44 J. P. 38, D. C.*

942. Equitable right—Trust.]—R. v. STAFFORD (MARQUIS), No. 1104, post.

*943. — Mandamus to justices to hear complaint of member of benefit society—Altered rules of society not enrolled.]—A friendly society enrolled its rules in 1794, under 33 Geo. 3, c. 54. In 1804 alterations were made in them, but, by a neglect for which the society was not to blame, the altered rules were never enrolled. They were, however, acted upon, & the original ones disused till 1835, when the omission to enrol was for the first time discovered. On motion for a mandamus to justices to hear the complaint of a member who had been expelled in 1836:—*Held*: it was doubtful whether the original rules continued in force, & consequently, the ct. could not issue a mandamus to the justices, but would leave appct. to his remedy in equity.—*R. v. GODOLPHIN (LORD)* (1838), 8 Ad. & El. 338; 3 Nev. & P. K. B. 488; 1 Will. Woll. & H. 451; 7 L. J. M. C. 104; 112 E. R. 865; *sub nom. R. v. CAMBRIDGE JJ.*, 2 J. P. 501; 2 Jur. 613.*

Annotation:—Distd. R. v. Cotton (1850), 15 Q. B. 569.

See, further, FRIENDLY SOCIETIES; INDUSTRIAL, PROVIDENT & SIMILAR SOCIETIES.

*944. — Compelling acceptance of surrender of legal estate by trustee.]—Under 11 Geo. 4 & 1 Will. 3, c. 60, s. 8, the Ct. of Ch., upon the master's report, made an order declaring that the heir of W., legal tenant in fee of copyhold premises, could not be found, that W. held as trustee & that R. was entitled to the equitable fee, & appointing G. trustee to convey or surrender the legal estate. This ct. refused to compel the lord, by mandamus, to accept G.'s surrender, on the ground that the Ct. of Ch. could compel the performance of whatever was requisite, & was better able than this ct. to regulate the rights of the parties.—*R. v. PITT* (1839), 10 Ad. & El. 272; 2 Per. & Dav. 385; 8 L. J. Q. B. 277; 3 Jur. 1028; 113 W. R. 106.*

Annotation:—Consd. Re Lane & Irving (1864), 12 W. R. 710.

See, now, Trustee Act, 1850 (c. 60), s. 20.

PART VI. SECT. 1, SUB-SECT. 3.— B. (b).

948 i. General rule.]—There must be something in the case to show the ct. that the matter is one of a public

nature to induce it to grant a mandamus.—R. v. DUBLIN & DUNDUM & ENNISERRY RY. CO. (1846), 8 L. T. O. S. 199.—*IR.*

948 i. To enforce private rights—

945. —.]—R. v. ORTON TRUSTEES, No. 1131, post.

*946. —.]—Where a mortgage deed, in the form prescribed by the Turnpike Roads Act, 1822 (c. 126), s. 81, assigned the tolls & toll-houses of a turnpike road, to hold for the residue of the term of which the tolls were granted, unless the mortgage money, with interest, were sooner repaid:—*Held*: under such a mtge. the mtgee. had only an equitable right to enforce payment of the principal & interest, & consequently, no mandamus would be granted to compel the trustee of the road to pay the interest.—*R. v. BALBY & WORKSOP TURNPIKE ROAD, TRUSTEES* (1853), Bail Ct. Cas. 134; 22 L. J. Q. B. 164; 17 J. P. 343; 17 Jur. 734; 1 W. R. 150; *sub nom. Re BAWLBY & WORKSOP TURNPIKE ROADS, TRUSTEES*, 20 L. T. O. S. 252.*

*947. — Trustee Act, 1850 (c. 60), s. 20.]—The ct. will, by mandamus to the lord of the manor, give effect to an order of the Ct. of Ch., appointing a person to convey copyholds under the above Act.—*Re LANE & IRVING* (1864), 12 W. R. 710.*

(b) Must be Public Right.

948. General rule.]—The reason why we grant these writs [of mandamus] is to prevent a failure of justice, & for the execution of the common law, or of some statute, or of the King's charter, & as a private remedy to the party (LORD HARDWICK, C.J.).—R. v. WHEELER (1735), Cunn. 155; *Lee temp. Hard.* 99; 94 E. R. 1123.

949. To enforce private rights—Of trading corporation.]—The ct. never grant this writ except for public purposes & to compel the performance of public duties. This is an application, at the instance of one of several partners, in a trading co. to compel his co-partners to divide their profits; but that is a mere private purpose & prevents a fit subject for inquiry on the other side of the hall. There is no instance in which the ct. have granted a mandamus to a trading corp., & that being so I think we should not now grant it for the first time (BAYLEY, J.).—R. v. BANK OF ENGLAND (1819), 2 B. & Ald. 620; 106 E. R. 492.

Annotations:—Consd. R. v. London Assce. Co. (1822), 1 Dow. & Ry. K. B. 510. *Reid. R. v. Hopkins* (1841), 10 L. J. Q. B. 63. *Mentd. Leeman v. Lloyd, Wilkinson v. Lloyd* (1845), 14 L. J. Q. B. 165.

950. —.]—The ct. will not grant a mandamus to a private trading corpn. to permit a transfer of stock to be made in their books.—R. v. LONDON ASSURANCE CO. (1822), 5 B. & Ald. 899; 1 Dow. & Ry. K. B. 510; 106 E. R. 1420.

Annotation:—Mentd. Leeman v. Lloyd, Wilkinson v. Lloyd (1845), 14 L. J. Q. B. 165.

951. To inspect parish books—No special grounds shown.]—R. v. CLEAR, No. 1135, post.

952. —.]—There is no general unqualified right on the part of the ratepayers to inspect & take extracts from the churchwarden's books of accounts. To entitle a ratepayer to a mandamus to compel such inspection some special & public ground must be shown.

Where the affidavit stated that the application had been made bona fide, & for the purpose of enabling appct. & other parishioners & ratepayers to take part in the proceedings of the vestry, & that he & they might properly understand & act upon the business to be brought before it, & not for any unlawful or improper purpose or object:—

Arising under agreement.]—A writ of mandamus cannot be granted to enforce private rights arising under an agreement.—KINGSTON CITY v. KINGSTON, PORTSMOUTH & CATARAQUI ELECTRIC RY. CO. (1898), 25 A. R. 492.—*CAN.*

Held: a mandamus commanding the churchwardens to permit the appct. to inspect & take extracts from the churchwardens' books of accounts ought not to be granted.—*Ex p. BRIGGS* (1859), 1 E. & F. 881; 28 L. J. Q. B. 272; 120 E. R. 1141.

953. To implement charitable scheme.]—An individual conveyed lands to private persons in trust to distribute the rents periodically among the poor of a certain parish. The deed provided that a receiver should be appointed, & should account to the parishioners from time to time, & that a coffer, of which there should be three locks & three keys, should remain in the parish church, for keeping all writings and accounts, & trust money unexpended; one key to be kept by the receiver, another by the incumbent or curate, & the third by one of the churchwardens. An information was afterwards exhibited in chancery, praying that a scheme might be approved of for the future management of the charity & application of the funds, & a scheme was accordingly prepared & decreed, regulating the matters referred to in the above prayer, but making no mention of the coffer or keys. On motion for a mandamus to the trustees to deliver one key to the churchwardens:—**Held:** (1) the claim of the churchwardens was not merely equitable, but that they had a legal right which might be enforced by mandamus; (2) it was no objection to the rule that the charity was a private institution.—*R. v. ABRAHAM* (1843), 4 Q. B. 157; 114 E. R. 857; *sub nom. R. v. OTTERTY ST. MARY, DEVON*, 8 Gal. & Dav. 382; 12 L. J. Q. B. 118; 7 J. P. 68; 7 Jur. 129; *subsequent proceedings, sub nom. R. v. OTTERTY ST. MARY, CHARITIES TRUSTEES*, 7 J. P. 433; (1844), 8 J. P. Jo. 789.

Annotation:—As to (1) & (2) *Reid. R. v. Orton Vicarage Trustees* (1849), 18 L. J. Q. B. 321.

See, further, CHARITIES, Vol. VIII., p. 389, No. 2089.

C. Legal Right must be in Applicant.

954. General rule.]—By a local Act, the Comrs. of a Ct. of Requests were empowered to order debts, when recovered by its process, to be paid by instalments, & under such terms & conditions as might appear reasonable & just to them. They made an order whereby the payments were directed to be made to a person who was then the deputy steward of the ct. Payments were made to him, & in consequence of plffs. not applying for them, a large sum had accumulated in his hands, when his principal died & he was removed:—**Held:** the comrs. not having revoked his authority, nor issued any other order, a mandamus would not lie at the suit of the succeeding steward, to compel the late deputy to pay over the accumulations to such successor.—*R. v. WATSON* (1837), 2 Nev. & P. K. B. 595.

955. —.]—*R. v. ORTON TRUSTEES*, No. 1131, *post*.

956. —.]—A metropolitan district board of works, as the local sanitary authority, have no

specific legal interest entitling them to a mandamus directing the local board of guardians to enforce the provisions of Vaccination Acts, 1867 (c. 84), 1871 (c. 98), & 1874 (c. 75).—*R. v. LEWISHAM UNION*, [1897] 1 Q. B. 498; 66 L. J. Q. B. 403; 76 L. T. 324; 61 J. P. 151; 45 W. R. 346; 13 T. L. R. 154; 41 Sol. Jo. 210, D. C.

Annotations:—*Consol. R. v. Manchester Corpn.*, [1911] 1 K. B. 660. *Dist. R. v. L. C. C.*, *Ex p. Corrie*, [1918] 1 K. B. 68. *Reid. Bank of Bombay v. Suleman Somji* (1908), 99 L. T. 62.

957. —.]—The Corpn. of London, who as a rating authority were interested in the preparation of a valuation list as the basis for a consolidated rate, applied for a writ of mandamus to compel the assessment committee to insert the ratable values of the various properties in the appropriate column in the valuation list:—**Held:** assuming there was a duty in the assessment committee to insert the ratable values of the exempted properties in the valuation list, the corp. as a rating authority had a right of appeal to quarter sessions under Valuation (Metropolis) Act, 1869 (c. 67), s. 32, & having an alternative & effective remedy, were not entitled to a mandamus.

The sole ground for the application is that the rating authority is interested in the proper performance of its statutory duty by the assessment committee. That in itself is an inadequate reason. It is altogether too broad a proposition to say that the mere fact of its being interested in the proper performance by the assessment committee of its duty, justifies the granting of such a mandamus to the rating authority. Every ratepayer of every parish is interested in the insertion of every hereditament in a parish & in the proper valuation by the assessment committee of the hereditaments which are inserted in the valuation list, but as I read the Act, ratepayers of other parishes cannot individually complain of such matters & certainly cannot obtain a mandamus such as is here applied for (*FLETCHER MOULTON, L.J.*).—*R. v. LONDON CITY ASSESSMENT COMMITTEE*, [1907] 2 K. B. 764; 97 L. T. 346; 71 J. P. 377; *sub nom. R. v. LONDON CITY UNION*, *Ex p. LONDON CORPN.*, 76 J. J. K. B. 1087; 23 T. L. R. 502; 5 L. G. R. 819; 2 Konst. Rat. App. (1904-8), 596, C. A.

Annotation:—*Ment. R. v. County of London JJ.*, *R. v. City of London JJ.*, [1912] 2 K. B. 566.

958. —.]—The ct. will not grant a mandamus commanding a party to pay money to the treasurer of a borough, under Municipal Corpn. Act, 1835 (c. 76), s. 92, unless the application be made, either by the treasurer, or after he has been required to demand the payment, though the party applying for the mandamus be ultimately entitled to the money.—*R. v. FROST* (1838), 8 Ad. & El. 822; 1 Per. & Dav. 75; 1 Will. Woll. & H. 664; 2 J. P. 726; 2 Jur. 966; 112 E. R. 1049.

Annotation:—*Expld. R. v. Peterborough Corpn.* (1875), 44 L. J. Q. B. 85.

959. Applicant not personally interested.]—

PART VI. SECT. 1, SUB-SECT. 3.—C.

954 i. General rule.]—A mandamus lies to enforce a contract entered into by a person with public officers for the performance of public work on which he has the legal right to the money, but no legal remedy by action, though a third party was secretly interested with him in the performance of the work, & claims the money under arbitration to which they had submitted their disputes.—*R. v. YORK JJ.* (1849), 6 N. B. R. (1 All.) 273.—CAN.

954 ii. —.]—Before the writ of prerogative mandamus can issue appct. must have a specific legal right to the

performance of some duty by resp.—*Re ROBERTSON & GRAND TRUNK RY. Co.* (1907), 9 O. W. R. 629; 14 O. L. R. 497.—CAN.

954 iii. —.]—An appct. for mandamus is enforcing a strictly legal right & must show that he is in all respects clearly entitled to the relief asked for.—*Re FRANKEL & WINNIPEG CITY* (1912), 22 W. L. R. 597; 3 W. W. R. 405; 8 D. L. R. 219.—CAN.

954 iv. —.]—*R. v. EDWARD* (1912), 22 W. L. R. 723; 8 D. L. R. 450.—CAN.

954 v. —.]—The ct. will not grant a mandamus to the prejudice of a

person who has a legal title, in favour of one whose legal title can only be sustained by presuming an act essential to the validity of his title.—*R. v. ELPHIN (Br.)* (1824), 2 Fox. & S. Ir. 75.—IR.

959 i. Applicant not personally interested.]—An application by two members of a municipal council for mandamus to the warden to repay to the treasurer a sum he had received from the council as salary for his services as warden, was refused, the parties applying having no particular interest in the matter.—*R. v. GORE DISTRICT COUNCIL* (1849), 5 U. C. R. 367.—CAN.

Sect. 1.—The prerogative writ: Sub-sect. 3, C. & D. (a) & (b).]

R. v. MIDDLESEX JJ. (1832), 3 B. & Ad. 938; 1 L. J. M. C. 68; 110 E. R. 345.

Mentd. Garrett v. Middlesex JJ. (1884), 12 Q. B. D. 620; *R. v. Surrey JJ.* (1888), 52 J. P. 423; *Drapor's Co. v. Hadder* (1892), 57 J. P. 200.

960. —[—G., a clerk in holy orders, residing in the city & diocese of O., applied to the Bishop of C. to issue a commission, under Church Discipline Act, 1840 (c. 86), s. 3, against R., rector of the parish of W., in the diocese of C., to inquire into certain charges made by G. against R. of offences against the laws ecclesiastical. G. had no connection with the parish of W. or diocese of C., nor had he any private or personal interest in the said charges. The bishop declined, after inquiry, to issue a commission. Upon the showing cause against a rule for a mandamus to the bishop, commanding him to issue a commission:—*Held*: (1) under the statute, the bishop had a discretion as to issuing a commission or not; (2) as it was in the discretion of the ct. to grant a mandamus or not, the mandamus ought not to issue upon the application of one who was a stranger to the parish & diocese, & had no personal interest in the investigation of the charges.—*R. v. CHICHESTER (BP.)* (1859), 2 E. & E. 209; 29 L. J. Q. B. 23; 33 L. T. O. S. 271, 301; 23 J. P. 821; 6 Jur. N. S. 120; 7 W. R. 629; 121 E. R. 80.

Annotations:—As to (1) Consd. Re Newport Bridge (1859), 2 E. & E. 377; *Julius v. Oxford Bp.* (1880), 5 App. Cas. 214. *Refd. R. v. Monmouthshire JJ.* (1859), 1 L. T. 131; *Martin v. Mackonochie, Flamank v. Simpson* (1868), L. R. 2 A. & E. 116; *Sheppard v. Bennett* (1869), L. R. 2 A. & E. 335; *R. v. London Bp.* (1889), 24 Q. B. D. 213; *R. v. Canterbury Archbp.*, [1902] 2 K. B. 503. *As to (2) Consd. Elphinstone v. Purchas* (1870), L. R. 3 P. C. 245; *R. v. Oxford Bp.* (1879), 4 Q. B. D. 525. *Refd. Sheppard v. Phillimore & Bennett* (1869), L. R. 2 P. C. 450; *R. v. Canterbury Archbp.*, [1902] 2 K. B. 503.

961. —[—Under National Debt Act, 1870 (c. 71), s. 52, the Bank of England are directed to keep a list of unclaimed stock, transferred to the National Debt Comrs., which list is to be "open for inspection at the usual hours of transfer." Upon an application for a mandamus to compel the bank to allow inspection of the list to appct., who carried on business as a "next of kin & unclaimed money agent" & desired inspection in order to make a copy of the list for the purposes of his business:—*Held*: inasmuch as appct. did not show that he, *bonâ fide*, claimed an interest in any unclaimed stock, either on his own behalf, or as representing some other person, he was not entitled to inspection of the list, under s. 52.—*R. v. BANK OF ENGLAND (GOVERNOR, ETC.)*, [1891] 1 Q. B. 785; 60 L. J. Q. B. 497; 64 L. T. 468; 55 J. P. 695; 39 W. R. 558; 7 T. L. R. 421, D. C.

Annotation:—Folld. R. v. Bank of England, Ex p. Collis (1906), 22 T. L. R. 477.

962. —[—A rule was obtained calling upon the Governor & Co. of the Bank of England to show cause why a writ of mandamus should not issue commanding them to produce for inspection the list of the amount of stock which had been transferred by them to the credit of the Comrs. for the reduction of the National Debt pursuant to National Debt Act, 1870 (c. 71), s. 52:—*Held*: to entitle a person to inspection of the list he must, at least, show some ground for claiming, either on his own behalf, or on behalf of some other person,

an interest in the stock.—*R. v. BANK OF ENGLAND, Ex p. COLLIS* (1906), 22 T. L. R. 477, D. C.

963. Application by one parishioner—As to appointment of churchwarden.—*R. v. CHEADLE (CHURCHWARDENS)* (1877), 41 J. P. Jo. 292.

As to mandamus to swear in or elect churchwardens, see ECCLESIASTICAL LAW.

964. What is sufficient interest—Person obtaining insertion of special clause in Act of Parliament.—Where petitioners appear in opposition to a Bill before Parliament, & with the object of protecting their own interests, procure the insertion in the Bill of a clause imposing a particular duty upon the promoters or other persons, they will have a sufficient interest in the performance of that duty to support an application by them for a mandamus to enforce it, notwithstanding that they are not named in the clause, & that the duty is one imposed for the benefit of the public at large.—*R. v. MANCHESTER CORPN.*, [1911] 1 K. B. 560; *sub nom. R. v. MANCHESTER CORPN.*, *Ex p. WISEMAN*, 80 L. J. K. B. 263; 104 L. T. 54; 75 J. P. 73; 9 L. G. R. 129, D. C.

D. Demand for and Refusal of Compliance.

(a) In General.

965. General rule.—A revising barrister for a parliamentary borough, owing to an accident to his right hand, availed himself of clerical assistance to mark upon the lists of voters the results of his decisions as pronounced orally in ct. By some inadvertence the clerk omitted to strike off the lists the names of some persons who had been successfully objected to & whose names were ordered by the revising barrister to be expunged. The lists with those names remaining on were delivered by the revising barrister to the town clerk, & the names were accordingly printed in the register of electors for the borough. The mistake was not discovered until the expiration of some months after the register had come into operation. The original lists of voters which had been before the revising barrister were either lost or destroyed:—*Held*: (1) the ct. had jurisdiction to grant writs of mandamus to the revising barrister & to the town clerk to have the mistake corrected; (2) that in the circumstances there need not be a previous demand & refusal to do the act sought to be enforced.

The requirement that before the ct. will issue a mandamus there must be a demand to perform the act sought to be enforced & a refusal to perform it is a very useful one, but it cannot be applicable in all possible cases. Obviously it cannot apply where a person has by inadvertence omitted to do some act which he was under a duty to do & where the time within which he can do it has passed (*CHANNELL, J.*).—*R. v. HANLEY REVISING BARRISTER, R. v. STOKE-ON-TRENT TOWN CLERK*, [1912] 3 K. B. 518; 81 L. J. K. B. 1152; 76 J. P. 438; 28 T. L. R. 531; 10 L. G. R. 842; 2 Smith, Reg. Cas. 36, D. C.

966. Must precede application.—The ct. will not grant a rule *nisi* for a mandamus to compel justices to issue their warrant to levy expenses of cutting a hedge, pursuant to Highway Act, 1835 (c. 50), s. 65, unless it appears that a demand has been made of the expenses from the person sought

PART VI. SECT. 1, SUB-SECT. 3.—D. (a).

966 i. Must precede application.—Where a public body exercises powers under an Act which also prescribes the manner in which the powers are to be exercised, such public body should

specifically be required to do those things which the Act enjoins; & where the person aggrieved has not made such demand, mandamus will not be granted.—*Re WALL* (1890), 16 V. L. R. 686.—**AUS.**

966 ii. —[—On application for a

mandamus to a road co. to transfer stock to a purchaser thereof:—*Held*: demand & refusal were essential.—*Re GUILLOTT, SANDWICH & WINDSOR GRAVEL ROAD CO.* (1887), 28 U. C. R. 246.—**CAN.**

966 iii. —[—The absence of de-

to be charged, & that the justices were informed of that demand.—*Ex p. WHITMARSH* (1840), 8 Dowl. 431; 4 Jur. 823.

967. —.]—*R. v. BRIDGEWATER CORPN.* (1844), 8 J. P. Jo. 390.

968. —.]—A special application & refusal are conditions precedent to a mandamus to compel the performance of a duty. No general declaration of the party not to perform the duty required supersedes the necessity of such application.—*R. v. CHAPMAN* (1845), 4 L. T. O. S. 332.

969. —.]—A clergyman of the Church of England refused to bury a child of one of his parishioners, who had been baptised by a dissenting minister. The Ct. of Arches declared the complaining party had no *locus standi* as convenient warning had not been given to the vicar. An application for a mandamus was then made but refused as there had been no demand & refusal since the decision of the Ct. of Arches.—*R. v. BASSINGBOURNE (VICAR)* (1845), 9 J. P. Jo. 83.

970. —.]—Though day for performance fixed by statute.—*Semble*: demand & refusal are necessary to found a writ of mandamus commanding the performance of an act which a statute directs to be performed, although a particular day for performing the act be fixed by the statute.—*R. v. ST. MARY, NEWINGTON, GUARDIANS* (1851), 17 L. T. O. S. 163; 15 J. P. 467.

971. —.]—*Re METROPOLITAN SEWERS COMRS.* (1853), 17 J. P. Jo. 438.

972. —.]—*R. v. ST. MARY, ISLINGTON* (1898), *Times*, Aug. 3.

973. —.]—A person who applies for a mandamus against a local authority must show that they have refused to perform a duty, or have acted upon some ground outside their jurisdiction (LORD ALVERSTONE, C.J.).—*R. v. TYNEMOUTH CORPN.*, [1911] 2 K. B. 361; 80 L. J. K. B. 892; 105 L. T. 217; 75 J. P. 420; 9 L. G. R. 953, D. C.

As to necessity for demand from officer of corporation.—*See CORPORATIONS*, Vol. XIII., p. 314, No. 479.

974. Acquiescence in refusal by applicant—*SOCIETY* (1854), 18 J. P. Jo. 311; *sub nom. R. v. ALDHAM & UNITED PARISHES INSURANCE SOCIETY*, 2 W. R. 456.
Writ discharged for absence of demand—Effect of subsequent demand.—*See Nos. 1437, 1438, post.*

(b) Sufficiency of Demand.

975. Whether made to authority as a body.—A mandamus to the justices & the clerk of the peace of a borough, to permit the attorney on behalf of certain persons, contributors to the county rate, to inspect & take copies of the last two rates made for the borough, & all orders made for the expenditure of the same, & the several orders of sessions made thereon, & all other proceedings & documents relating thereto, does not lie till after application for such inspection made to & refused by the justices assembled in quarter sessions.—*R. v. LEICESTER JJ.* (1825), 4 B. & C. 891, n.; 7 Dow. & Ry. K. B. 373, n.; 107 E. R. 1292;

subsequent proceedings (1826), 7 Dow. & Ry. K. B. 708.

Annotations:—*Consd. R. v. Staffordshire JJ.* (1837), 6 Ad. & El. 84. *Re R. v. Nottingham JJ.* (1835), 3 Ad. & El. 500; *R. v. St. Pancras Church Trustees* (1835), 3 Ad. & El. 535; *R. v. St. Mary-le-bone Vestrymen* (1836), 5 Ad. & El. 268.

976. —.]—Where no application has been made to the trustees of a local Act, as a body, to appoint a gentleman appearing to be duly elected as their clerk, & there has been consequently no refusal by them as a body, this ct. will not grant a mandamus commanding them to make such appointment.

It does not appear by the affidavits that any application has been made to the body of the trustees to appoint this gentleman, & there has been no refusal by the body. The refusal was the act of one or two trustees, but I think you show no refusal by the body (WIGHTMAN, J.).—*R. v. CHEADLE HIGHWAY TRUSTEES* (1842), 7 Jur. 373.

977. —.]—Demand made to steward of court.—*Re PALACE COURT JUDGES, Ex p. JACQUET* (1849), 12 L. T. O. S. 372.

978. —.]—Demand made to justices' clerk.—An application was made to the clerk to certain justices for a summons for assault, & refused by him. Appct. thereupon applied to the High Ct. for a mandamus against the justices to grant a summons:—*Held*: no ground had been shown for a mandamus against the justices.—*Ex p. ANDREWS* (1901), 65 J. P. 490, D. C.

979. Must be made to individual survivor of three commissioners.—On an application for a mandamus against a person who is the last of three comrs. under an inclosure Act, that he should make his award, it is necessary that it should be distinctly stated in the affidavits that application has been made to such individual comr.—*R. v. WEBB* (1840), 4 J. P. 188.

980. Demand on principal officer of company—10 Geo. 4, c. 56, s. 9.—On argument against a rule *nisi* for a mandamus to the secretary or other principal officer of a society within the above Act to sign a notice for convening a general meeting to consider the propriety of rescinding or altering the rules of the society:—*Held*: sect. 9 of the Act imposed upon a principal officer, when applied to by a requisition of the proper number of members, the duty of signing a notice for convening a general meeting for the purpose mentioned.—*R. v. ALDHAM & UNITED PARISHES INSURANCE SOCIETY* (1851), 21 L. J. Q. B. 1; 16 J. P. 149; 15 Jur. 1035.

981. Whether specific demand necessary.—*R. v. BRECKNOCK & ABERGAVENNY CANAL CO.*, No. 992, *post*.

982. —.]—(1) Where an Act of Parliament empowers a co. to execute works, & prescribes the manner in which they shall be done, a party wishing to enforce the proper execution by mandamus must, after the work is completed, specifically require the co. to perform those things which, according to his view, the Act enjoins.

(2) Unless such demand be made after completion of the work, and compliance be refused,

mand & refusal is fatal to proceedings for mandamus.—*FLEMING v. WAYERLEY TOWN BOARD* (1914), 33 N. Z. L. R. 831.—N. Z.

m. Must be proved.—Mandamus refused, because demand & refusal was not sufficiently shown.—*Re COLLINGWOOD SCHOOL TRUSTEES & COLLINGWOOD TOWN* (1869), 17 U. C. R. 133.—CAN.

n. Refusal denied by respondent.—On application for mandamus, de-

mand & refusal were sworn to, resp. denied the refusal, & alleged that he had always been willing to do what was required:—*Held*: the mandamus might issue.—*Re OTONABEE SCHOOL TRUSTEES & CASEMENT* (1859), 17 U. C. R. 275.—CAN.

PART VI. SECT. 1, SUB-SECT. 3.—D. (b).

o. Whether specific demand necessary.—Corporation asked to pass bye-

law.—Or submit it to electors.—Before the ct. will grant a mandamus to a municipal corpn. to pass or submit to the electors a bye-law granting a railway bonus, a distinct demand upon the corpn. to pass or submit the bye-law must be shown. On the facts:—*Held*: an insufficient demand.—*Re PECK & PETERBOROUGH CORPN.* (1873), 34 U. C. R. 129.—CAN.

Deputation petition.—On motion for a

Sect. 1.—The prerogative writ: Sub-sect. 3, D. (b) & (c).]

in terms or virtually, a mandamus will not be granted, though the statute has been palpably disobeyed, & though it assigned a limited time for the performance, which time has elapsed.—*R. v. BRISTOL & EXETER RY. CO.* (1843), 4 Q. B. 162; 3 Ry. & Can. Cas. 433; 3 Gal. & Dav. 384; 12 L. J. Q. B. 106; 7 J. P. 130; 7 Jur. 233; 114 E. R. 859.

Annotation:—As to (1) Consd. R. v. Dundalk & Enniskillen Ry. (1861), 5 L. T. 25.

983. —[A mandamus will not be granted until the precise thing it is to command has been required of the party to be done, & it is shown that he has refused to do it.—*R. v. STAMFORD CORPN.* (1845), 1 New Mag. Cas. 163; 4 L. T. O. S. 153; 9 Jur. 159.

984. —Order asked for from quarter sessions.]—To entitle a party to obtain a mandamus to compel the ct. of quarter sessions to make an order in a given matter, it is not necessary that he should have requested that ct. to make any specific order, provided he requested it to exercise its jurisdiction in the matter.—*R. v. CORNWALL JJ.*, [1903] 2 K. B. 178; 72 L. J. K. B. 622; 88 L. T. 775; 67 J. P. 290; 52 W. R. 31; 19 T. L. R. 501; 47 Sol. Jo. 535; 1 L. G. R. 605; Ryde & K. Rat. App. 316, D. C.

985. Demand for inspection of documents—Should state purpose for which required.]—(1) Before the ct. will grant a mandamus there must be a direct refusal by the proper parties to do the act.

(2) *Semle*: a party applying for a mandamus to give inspection of books of a co. ought to show that, when he demanded the inspection, he stated the object for which he wanted it.—*R. v. WILTS & BERKS CANAL CO.* (1835), 3 Ad. & El. 477; 5 Nev. & M. K. B. 344; 111 E. R. 495.

Annotations:—As to (1) Consd. Holland v. Dickson (1888), 37 Ch. D. 669. Rejd. R. v. Bristol & Exeter Rys. (1843), 7 J. P. 130. As to (2) Consd. R. v. London & St. Katherine Dock Co. (1874), 44 L. J. Q. B. 4. Generally, Rejd. R. v. Wilts Canal Co. (1874), 8 J. P. 311; Davies v. Gas Light & Coke Co., [1909] 1 Ch. 248. Mentd. Bank of Bombay v. Suleman Somji (1908), 99 L. T. 62.

986. Must be at proper time.]—A demand made at quarter sessions to inspect a rate is not made at a proper time, & is not sufficient to support an application for a mandamus.—*R. v. NOTTINGHAM JJ.* (1835), 3 Ad. & El. 500; 1 Har. & W. 318; 5 Nev. & M. K. B. 160; 4 L. J. M. C. 113; 111 E. R. 503.

Annotation:—Rejd. R. v. Staffordshire JJ. (1837), 6 Ad. & El. 84.

987. —After completion of works—Company not complying with provisions of special Act.]—*R. v. BRISTOL & EXETER RY. CO.*, No. 982, *ante*.

988. —[A mandamus to the officer to sign the notice for convening a meeting under 10 Geo. 4, c. 56, s. 9, will not be granted unless it appears that the requisition provided for by the sect. has been made within a year.—*R. v. ALDHAM & UNITED PARISHES INSURANCE SOCIETY* (1854), 2 W. R. 456.

989. Negotiations subsequent to demand—Renewal of demand necessary.]—*Ex p. CHAMP* (1856), 20 J. P. Jo. 756.

990. Demand coupled with offer to refer question

of damage.]—*Ex p. PARSONS* (1858), 22 J. P. Jo. 68.

991. Seconding demand for poll—Equivalent to demand—Public Health Act, 1875 (c. 55), Sched. III, r. 6.]—A resolution having been declared carried at a meeting of owners & ratepayers, one of the ratepayers present demanded a poll, & another rose & seconded it "if necessary." The latter was told by the town clerk that it was unnecessary to second the demand which had been acceded to, & the meeting then separated. Subsequently the original demand for a poll was withdrawn by its proposer, & the mayor refused to treat the action of the seconder as a demand of a poll by him. Under an application by the second ratepayer for a mandamus to the mayor:—*Held*: the action of appt. was in substance a demand of a poll by him within the meaning of Sched. III, r. 6, of the above Act.—*R. v. DOVER CORPN.*, [1903] 1 K. B. 668; 72 L. J. K. B. 210; 88 L. T. 296; 67 J. P. 81; 19 T. L. R. 255; 47 Sol. Jo. 299; 1 L. G. R. 266, D. C.

(c) What amounts to a Refusal.

992. General rule.]—By an Act establishing a canal co., it was provided that certain land-owners might call upon them by notice, as directed in the Act, to execute certain works, communicating with the co.'s canal & railways, & that, if the co. should refuse for six months after such request, appts. might themselves perform the works in the same manner as the co. might have done them. An application being made to the co. under this clause, they answered that they would do the works themselves, but they delayed proceeding, & on remonstrance, gave as a reason, that the proposed operation would interfere with the property of other parties, who were likely, if so disturbed, to bring an action. The co. offered nevertheless to proceed if indemnified. Appts., in answer, stated that they considered the excuse insufficient, & did not understand how they could be expected to indemnify. Six months had at this time elapsed since the original application. The works not being done, a mandamus was applied for:—*Held*: the writ could not issue, it not appearing from the above facts that, after the consent given by the co. to execute the works, there had been any express demand & refusal of performance, or any conduct on the co.'s part equivalent to such refusal.

We cannot grant a mandamus unless there has been a direct refusal, & here I think there has not. It is not indeed necessary that the word refuse or any equivalent to it should be used, but there should be enough to show that the party withholds compliance, & distinctly determines not to do what is required (LORD DENMAN, C.J.).

A mandamus ought not to be moved for unless the party alleged to be in fault has known distinctly what he was required to do so as to exercise an option whether he would do it or not (COLERIDGE, J.).—*R. v. BRECKNOCK & ABERGAVENNY CANAL CO.* (1835), 3 Ad. & El. 217; 1 Har. & W. 279; 4 Nev. & M. K. B. 871; 4 L. J. M. C. 105; 111 E. R. 395.

Annotations:—Consd. R. v. Wilts & Berks Canal Co. (1840), 8 Dowl. 623; R. v. Bristol & Exeter Ry. (1843), 4 Q. B. 162.

mandamus to compel a council, after the filing of a petition in due time, to submit a bye-law to the electors:—*Held*: if a demand other than the filing of the petition was necessary to found the application for a mandamus, the action of a deputation which waited on the council & urged the submission of the bye-law was a sufficient demand.—*Re*

WILLIAMS & BRAMPTON (1908), 17 O. L. R. 398.—CAN.

q. —Demand proved not sufficient.]—*Re BOARD OF EDUCATION & PERTH CORPN.* (1876), 39 U. C. R. 34.—CAN.

r. Must be reasonable.]—*Re MOUNT FOREST SCHOOL TRUSTEES & MOUNT*

FOREST VILLAGE (1869), 29 U. C. R. 422.—CAN.

PART VI. SECT. 1, SUB-SECT. 3.—D. (c).

992.1. General rule—Refusal must be distinct.]—*Re PECK & PETERSBOROUGH CORPN.* (1878), 34 U. C. R. 129.—CAN.

993. —.]—It would be too much to hold that positive words are necessary to constitute a refusal; the acts of the parties may be tantamount, but it should be shown that in effect there has been a refusal (LORD DENMAN, C.J.).—*R. v. GRAND WESTERN CANAL CO.* (1837), 1 Jur. 53.

994. —.]—In order to induce the cts. to issue a mandamus to a canal co. to make compensation to a claimant, a clear refusal on the part of the co. must be shown, and mere delay in attending to the claims is not sufficient.—*R. v. WILTS & BERKS CANAL CO.* (1840), 8 Dowl. 623; *sub nom. VINES v. WILTS & BERKS CANAL CO.*, 4 Jur. 848.

995. Refusal must be by party to do the act.]—*R. v. WILTS & BERKS CANAL CO.*, No. 994, *ante*.

996. Refusal by conduct.—Party claiming right of election in himself.]—Where an office is full by the appointment by the person who *primâ facie* has the right of appointment, & where there are means of trying the title by action, this ct. will not grant a mandamus against the party filling the office, in order to try the title.

Semle: (LORD DENMAN, C.J.) if the right of electing a sexton be in the inhabitants of a parish, & a mandamus to hold a meeting for such election be grantable the writ may be properly directed to the churchwardens, & not to the inhabitants in general.

A requisition had been directed to the churchwardens to call a meeting for the election of a sexton which they declined to do, on the ground that the minister had refused his consent, alleging the right of election to be in himself. On a motion for a mandamus to hold such election.

Semle: (LORD DENMAN, C.J.) the demand & refusal were sufficient to warrant an application for a mandamus to the minister & churchwardens.—*R. v. STOKE DAMEREL (MINISTER & CHURCHWARDENS)* (1836), 5 Ad. & El. 584; 2 Har. & W. 346; 1 Nev. & P. K. B. 56; 6 L. J. M. O. 14; 111 E. R. 1286.

Annotation:—*Mentd. Cansfield v. Blenkinsop* (1849), 4 Exch. 234.

997. — Refusal to hear party & witnesses.]—By an inland navigation Act, 35 Geo. 3, c. cvi., it was enacted, that any person aggrieved by the works might complain to the comrs. of the navigation at one of their meetings, & they should hear such complaint, & report upon it to a subsequent meeting, which should make such order & give such satisfaction as should be thought just & reasonable. A party aggrieved required satisfaction of the comrs., but received no definite answer. He then demanded that the comrs. should, at their next meeting, hear & report upon his complaint, stating that he would be prepared with evidence of the alleged injury. His agent attended the meeting with the witnesses, but they were ordered to withdraw, & no adjudication was made on his complaint. No explanation was given to complainant. Complainant moved for a mandamus to the comrs. to hear & report upon his complaint:—*Held*: the conduct of the comrs. was a virtual refusal to hear, & the rule would be made absolute.—*R. v. THAMES & ISIS NAVIGATION COMRS.* (1839), 8 Ad. & El. 901, n.; 112 E. R. 1080.

Annotations:—*Reid. R. v. Fall* (1843), 7 J. P. 224; *R. v. East Anglian Ry.* (1853), 2 E. & B. 475. *Mentd. Priestley v. Foulds* (1840), 2 Man. & G. 175.

998. — Statement by solicitor that he will accept service.]—By a railway Act a co. were required to construct a bridge over a river so as to leave the same width of waterway under it as

then existed at the point where the river was crossed, & so that there should be a clear height of five feet above the ordinary level of the river, provided that, after notice given to the co. by any owner or occupier of lands adjoining the railway, that the bridge was not made according to the intent & meaning of the Act, it should be lawful for such owner or occupier to apply for an order from a justice of peace enabling such person to make the bridge accordingly, the expenses to be defrayed by the co. The co. were constructing a bridge which did not comply with either of the above provisions, whereupon a landowner gave them notice requiring them to construct a bridge leaving the former width of waterway, & the clear height of five feet above the water, in the terms of the Act. The co.'s solr. replied, that the co. would do the first, & that he would accept process as to the second on behalf of the co.:—*Held*: these facts amounted to a refusal to do what was demanded, & appt. was entitled to a mandamus, notwithstanding the powers given him of applying to a justice.

The answer of the solr. of the co. is, that they will make the bridge of the required height, but that, as to the other matters, he will accept service. If that latter part is not a refusal by the co. I do not know what is to be considered a refusal (PATTESON, J.).—*R. v. NORWICH & BRANDON RY. CO.* (1845), 3 Dow. & L. 385; 4 Ry. & Can. Cas. 112; 15 L. J. Q. B. 24; 9 Jur. 1035.

999. — Statement of indemnity by adjoining owners.]—*R. v. LANCASTER & CARLISLE RY. CO.* (1847), 11 J. P. Jo. 422.

1000. — Reply to demand refused.]—*R. v. STALEYBRIDGE COMRS.* (1857), 21 J. P. Jo. 355.

1001. — —.]—*Ex p. YOUNG* (1896), 40 Sol. Jo. 338, D. C.

1002. — Illegal conditions attached to compliance.]—By a local Act it was provided that four, three, or two substantial householders, to be nominated yearly by the inhabitants of the township, should be tithe collectors for the township to levy the several sums chargeable by the Act upon the tenements within the township as & for the proportion of the township with all reasonable expenses attending the same. The inhabitants resolved that no persons should be appointed who did not pledge themselves to comply with certain conditions, & particularly not to charge more than 15 per cent. for expenses of collection. No one could be found to accept these conditions:—*Held*: the conduct of the inhabitants amounted to a refusal to fulfil their statutory duty of nominating collectors, & since no other remedy was provided by the Act a mandamus should issue to compel them to perform it.

It is quite clear that there was here a refusal to appoint any collectors except upon conditions which there was no power given by the Act to the inhabitants to impose at all (BUCKNILL, J.).—*R. v. LANCASTER (INHABITANTS)* (1900), 64 J. P. 280, D. C.

1003. Exercise of statutory discretion.]—Owners of land adjoining the Thames having applied, under Thames Conservancy Act, 1894 (c. clxxxvii), s. 109, & Port of London Act, 1908 (c. 68), s. 7, for permission to construct a deep water wharf & other extensive works, the Port of London authority in Nov. 1917, decided to refuse the application on the ground that the accommodation

998 i. *Refusal by conduct*.]—Though there be no express refusal formally enunciated, yet if the proceedings of a

municipal council show that there was a withholding of compliance with a petition to pass a bye-law, there is a

determination not to comply equivalent to a refusal.—*Re WILLIAMS & BRAYTON* (1908), 17 O. L. R. 398.—CAN.

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applied for was of the character of that which Parliament had charged the authority with the duty of providing. In Sept. 1918, appcts. applied for, & later obtained, a rule *nisi* for a mandamus commanding the authority to consider & exercise their discretion according to law upon the application, insisting that they had not done so:—*Held*: (1) there had been no refusal by the port authority to consider & exercise their discretion according to law; (2) if the refusal of the port authority amounted to a refusal to exercise their discretion according to law, an appeal to the Board of Trade under Port of London Act, 1908 (c. 68), s. 7 (2), assuming it to lie, was as convenient, beneficial & effectual a remedy as that by way of mandamus.

(3) *Semble*: the six months limitation to actions, prosecutions and proceedings prescribed by Public Authorities Protection Act, 1893 (c. 61), s. 1, does not apply to the prerogative writ of mandamus.—*R. v. PORT OF LONDON AUTHORITY; Ex p. KYNOCH, LTD.*, [1919] 1 K. B. 176; 88 L. J. K. B. 553; 120 L. T. 177; 83 J. P. 41; 35 T. L. R. 103; 16 L. G. R. 937, C. A.

Annotation:—*As to* (3) *Reid. R. v. Marshland Smoeth & Fen District Comrs.*, [1920] 1 K. B. 155.

E. Possibility of Effective Enforcement.

(a) Issue of Writ Ineffective.

1004. *General rule.*—The ct. will not grant a mandamus requiring trustees of a savings' bank to refer a dispute to arbn. under Savings Bank Act, 1828 (c. 92), s. 45, where it is clear that the enquiry could have no result; as where, by a rule of the bank, no deposit can be claimed after the expiration of seven years from the death of the depositor, & a claim, which it is proposed to refer, is confessedly not made within that time.—*R. v. NORTHWICH SAVINGS' BANK* (1839), 9 Ad. & El. 729; 1 Per. & Dav. 477; 2 Will. Woll. & H. 84; 8 L. J. M. C. 24; 112 E. R. 1388; *sub nom. LYON v. NORWICH SAVINGS' BANK (TRUSTEES & MANAGERS)*, 3 J. P. 209.

1005. —The ct. will not grant a mandamus, where the issuing of the writ would necessarily be inoperative, & could not be followed by any beneficial result, although it appear that the parties, against whom it is sought, had, upon the facts & circumstances before them, wrongfully refused to do the act required; but, in order to induce the ct. to withhold their assistance on this ground, they must be satisfied that no benefit could possibly result from the issuing of the writ.—*R. v. BRIDGMAN* (1846), 2 New Sess. Cas. 232; 15 L. J. M. C. 44; 6 L. T. O. S. 353; 10 J. P. 187; 10 Jur. 159, 738.

PART VI. SECT. 1, SUB-SECT. 3.—
E. (a).

1004 i. *General rule.*—*Mandamus*, being a discretionary remedy, should not be granted where it would be futile, & where on the evidence it is clear that on any further hearing no other result would follow.—*R. v. BLACKALL LICENSING COURT, Ex p. CHICONI* (1919), 13 Q. S. R. 4.—**AUS.**

1004 ii. —A *mandamus* will not be granted unless it clearly appears that it will be effectual.—*TUCK v. VICTORIA CITY* (1892), 2 B. C. R. 179.—**CAN.**

1004 iii. —The ct. will not direct the issue of a writ of *mandamus*, where the duty to be fulfilled arises out of an agreement the performance of which *in specie* is not deemed enforceable by the ct.—*KINGSTON CITY v. KINGSTON, PORTSMOUTH & CATARAQUI ELECTRIC*

Ry. Co. (1898), 28 O. R. 39; 25 A. R. 462.—**CAN.**

1004 iv. —A writ of *mandamus* will not be granted when if issued it would be unavailing, or where there is no necessity for the relief.—*Re GILES & WELLINGTON VILLAGE* (1899), 30 O. R. 610.—**CAN.**

1004 v. —*Re ASSINIBOIA ELECTORAL DIVISION, Re CARR* (1910), 14 W. L. R. 392.—**CAN.**

1004 vi. —*Re McKAY* (1917), 3 W. W. R. 447.—**CAN.**

1004 vii. —*R. v. DUBLIN & WICKLOW RY. CO.* (1852), 4 Ir. Jur. 168.—**CAN.**

1007 i. *Power in party to render writ inoperative.*—The ct. refused to grant a *mandamus* to the mayor & clerk of a municipality ordering them to call a special meeting of the council, where the business of the council was at a

1006. —The vicar & churchwardens of a parish declined to enter upon the notice paper of a vestry meeting a notice of motion by a parishioner that future meetings should be held in the evening. The Q. B. Div. having discharged a rule for a *mandamus* to compel them to do so:—*Held*: the summoning authority had power to fix the time of each vestry meeting, & there was no duty to allow notice of a motion which could not have any effect.—*R. v. WILSON* (1880), 43 L. T. 560; 45 J. P. 140, C. A.

1007. *Power in party to render writ inoperative.*—The ct. will not grant a *mandamus* to restore a person, where it is confessed he was rightly removed, though he had no notice at the time.

The ct. will not grant a party the assistance of this prerogative writ, when it is acknowledged that the corpn. had very sufficient cause to remove him, & when they would undoubtedly remove him again, the very instant he should be restored (LORD MANSFIELD, C.J.).—*R. v. AXBRIDGE CORPN.* (1777), 2 Cowp. 523; 98 E. R. 1220.

Annotations:—*Consd. R. v. Gaskin* (1799), 8 Term Rep. 209. *Reid. R. v. London Corpn.* (1787), 2 Term Rep. 177; *R. v. Bristol Corpn.* (1822), 1 Dow. & Ry. K. B. 389.

1008. —A *mandamus* refused to restore to the office of clerk of the Bridge-House estates in London, though the party was irregularly suspended, it appearing on his own showing that there was good ground for the suspension, if the proceedings had been regular.—*IL. v. LONDON CORPN.* (1787), 2 Term Rep. 177; 100 E. R. 96.

Annotations:—*Consd. R. v. Gaskin* (1799), 8 Term Rep. 209; *R. v. Griffiths* (1822), 5 B. & Ald. 731. *Reid. R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 401.

1009. —The ct. will not grant a peremptory *mandamus* to reinstate a person in a corporate office, though the return made to the writ may be objectionable in point of form, if the facts stated on that return justify the ct. in refusing the *mandamus* as matter of discretion.

It seems to be impossible to say that G. can be entitled to a peremptory *mandamus* to reinstate him in the office in question from which he may again be immediately removed for the same cause & by the same parties (*per cur.*).—*R. v. GRIFFITHS* (1822), 5 B. & Ald. 731; 106 E. R. 1358; *sub nom. R. v. BRISTOL CORPN.*, 1 Dow. & Ry. K. B. 389.

Annotations:—*Consd. R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 404. *Reid. R. v. Smith* (1844), 5 Q. B. 614.

1010. —*R. v. BODMIN CORPN.*, No. 1438, *post*.

1011. —*Exercise of discretionary power.*—An officer, whose conduct was brought before a ct. of inquiry by the order of a general officer in command complained that the regulations made

standstill owing to quarrels amongst the aldermen, & the issue of the writ was not likely to promote a settlement of disputes or a resumption of business.—*Ex p. LUCAS* (1910), 10 S. R. N. S. W. 120; 27 N. S. W. W. N. 19.—**AUS.**

1007 ii. —An Act provided for the management of the affairs of a hospital by a board of five trustees of whom two were to be appointed from among their number by the town council. The members of the town council refused to make the appointments, & a prerogative writ of *mandamus* was moved for:—*Held*: as there was no means of compelling members of the council to act, if nominated as members of the board, the writ would be futile & should be refused.—*R. v. ROACH, Re PAYZANT MEMORIAL HOSPITAL* (1915), 49 N. S. R. 310.—**CAN.**

1011 i. —*Exercise of discretionary*

under Army Act, 1881 (c. 58), s. 70, had not been complied with, & that as the result of evidence given before the ct. he had been ordered by the Army Council to revert to half-pay. He applied to the Army Council, who refused to reopen the matter. He then obtained a rule *nisi* for a mandamus to the Army Council commanding them to cause the ct. of inquiry to reassemble to hear & determine his case according to law:—*Held*: (1) the ct. would not intervene in matters relating to military law prescribing rules for the guidance of officers: (2) another & an equally appropriate remedy was open to the officer under s. 42 of the Act; (3) the power of the Army Council to assemble a ct. of inquiry was a discretionary power, & the ct. would not order an authority to exercise a discretion in a particular way; (4) the remedy by mandamus, if available, would in the circumstances be ineffective.—*R. v. ARMY COUNCIL, Ex p. RAVENSCROFT*, [1917] 2 K. B. 504; 86 L. J. K. B. 1087; 117 L. T. 306; 33 T. L. R. 387, D. C.

Annotation:—As to (1) & (2) **Consd.** *Heddon v. Evans* (1919), 35 T. L. R. 642.

1012. To hear appeal—Ultimate result arrived at right.]—Where an appeal had been entered against an order, after it had been superseded, & the sessions decided that they had jurisdiction to entertain the appeal notwithstanding, but afterwards ordered it to be struck out, on the ground that the original order had not been filled with the notice of appeal, as required by a rule of their practice relative to the entry of appeals, a rule for a mandamus to them to hear the appeal was discharged, because the result at which they had ultimately arrived was right, & the ct. would not inquire into their reasons.—*H. v. WEST RIDING JJ.* (1842), 1 Gal. & Dav. 630 ; 11 L. J. M. C. 57 ; 6 J. P. 153.

Annotations:—*Mentd.* R. v. Brighthelmstone Overseers (1842), 2 Gal. & Dav. 88; R. v. Anglesca JJ. (1843), 7 J. P. 482.

1013. To grant bail on one charge—Detainer lodged on second charge.—Where a person was committed by justices on one charge, & refused bail, & a rule for a mandamus was obtained &, after that, a detainer was lodged against the same person for a second offence, the rule for a mandamus was discharged.—*R. v. JONES* (1843), 7 J. P. 741.

1014. For new election - Result of old election unaffected by votes rejected.]—In the parish of B. the owners & not the occupiers of tenements, the value of which did not exceed £6, were assessed to & paid the rates for the relief of the poor, under 13 & 14 Vict. c. 99. At the election of a churchwarden for the parish, the votes of certain occupiers of tenements not exceeding the value of £6 were rejected on the ground that they were not entitled to vote, & one of the candidates was declared elected:—*Held*: as the election could not, on this ground, be considered as null & void, & it was not shown that the result of the election would have been different, an application for a mandamus could not be entertained.—*Ex p. MAWBY* (1854), 3 E. & B. 718; 18 Jur. 906;

power.]—A municipal council refused to approve plans of a house proposed to be erected on one of the main streets on sanitary grounds, the plans were submitted in substitution for a plan of a shop with sanitary premises. The council refused to approve of these plans on the same grounds, & subsequently refused to state the alterations necessary, stating that further details were unnecessary:—*Held*: the *mandamus* would be futile.—*Ex p. Voeg* (1915), 15 S. R. N. S. W. 345; 32 N. S. W. W. N. 111.—**AUS.**

1011 ii. ———.—The registrar of a Branch Medical Council, without notice to the party registered, struck out of the register a qualification, which the claimant did not show that he had obtained:—*Held*: the ct. would not, by *mandamus*, compel the registrar to reinsert such description.—*R. v. STEELE* (1861), 13 I. C. L. R. 398.—**IR.**

s. To hear appeal—[Where office in question already filled.]--Where an officer gave to the Public Service Comr. notice of appeal, under Commonwealth Public Services Acts, 1902-1911, s. 50,

118 E. R. 1310; *sub nom. Ex p. JOYCE*, 23
L. J. M. C. 153; *sub nom. Ex p. WOODING*, 18
J. P. 824; *sub nom. Ex p. HARDING*, 2 W. R. 473.
Annotation:—Consd. Shaw v. Thompson (1876), 3 Ch. D.
233.

1015. To take up award for compulsory purchase—Award admittedly valueless.¹—A mandamus stated that prosecutor gave notice that a ferry of which he was owner had been injuriously affected by the works of defts., a railway co., that both parties appointed arbitrators, that the umpire proceeded to determine the claim according to Lands Clauses Act, 1845 (c. 18), & made his award. The mandamus, also, commanded defts. at their own expense to take up the award, & furnish a copy to prosecutor. Return, that the ferry, & the interest of prosecutor in it, had not been injuriously affected by the co.'s works, within the above Act :—*Held* : as the demurrer admitted the truth of the statement in the return, the return was good, as it showed that the award would be a mere nullity, & the co. were not bound to incur useless expense in taking it up. - R. v. CAMBRIAN RY. Co. (1869), L. R. 4 Q. B. 320; 10 B. & S. 315; 38 L. J. Q. B. 198; 20 L. T. 437; 33 J. P. 359; 17 W. R. 667.

Annotations :- *Consd. R. v. L. & N. W. Ry.*, [1899] 1 Q. B. 921. *Reid. L. & N. W. Ry. v. Walker* (1900), 82 L. T. 93.

1016. — Validity of award contested.—By a special Act a number of railway cos. were dissolved & consolidated into a new co., & the Acts relating to the dissolved cos. were repealed. The special Act incorporated Railways Clauses Consolidation Act, 1845 (c. 20), which was to apply to the new co. as if the railways made under the repealed Acts had been made under the powers & provisions of the 1845 Act, & as if that Act had been expressly made applicable to those railways, & as if those railways had been authorised to be made under the special Act. There was a proviso that the repeal should not prejudice or affect anything done under the repealed Acts, or, except as in the repealing Act specially provided, affect the rights of any persons, under the repealed Acts, to which but for the repeal they would have been entitled.

Owners of minerals, lying under or near a part of the railway which had belonged to one of the dissolved cos., gave notice of their desire to work those minerals. An arbitration was held under Lands Clauses Consolidation Act, 1845 (c. 18), s. 35, to assess the amount of compensation to be paid to the owners of the minerals. The co. attended the arbitration under protest, & contended that, by virtue of the proviso in their Act, the assessment should be made under the Act of the dissolved co., & not under Railways Clauses Consolidation Act, 1845 (c. 20). The arbitrator made his award, which the co. refused to take up:—*Held*: (1) (A. L. SMITH, L.J.) the question whether the assessment of the amount of compensation to be paid to the owners of the minerals should have been made under the 1845 Act, or under the repealed Act, could not be entertained upon showing cause against the rule *nisi* to the co.

but he, being of opinion that an appeal did not lie, took no proceedings on the notice, & a junior officer was appointed to an office:—*Held*: *mandamus* should not issue to command the comr. to proceed with the appeal, as it would be futile.—*R. v. AUSTRALIAN COMMONWEALTH PUBLIC SERVICE COMR., Ex p. KILLEN* (1911), 18 C. L. R. 586.—**AUS.**

t. To compel justices to rehear—
Where no jurisdiction.] -R. (GILBEY) v.
FERMANAGH JJ., [1897] 2 I. R. 559;
31 I. L. T. 133.—**IR.**

Sect. 1.—The prerogative writ: Sub-sect. 3, E. (a), (b) & (c) & F. (a).]

to take up the award; (2) (COLLINS, L.J.) it was an answer to an application for a mandamus that the umpire had assessed compensation under the wrong Act.—*R. v. LONDON & NORTH WESTERN RY. CO.*, [1899] 1 Q. B. 921; 68 L. J. Q. B. 685; 15 T. L. R. 329; *sub nom. R. v. LONDON & NORTH WESTERN RY. CO.*, *Ex p. RUGBY PORTLAND CEMENT CO.*, 80 L. T. 782, C. A.; *on appeal, sub nom. LONDON & NORTH WESTERN RY. CO. v. WALKER*, [1900] A. C. 109, H. L.; [1903] A. C. 289, H. L.

1017. To present petition to Crown—Questioning validity of Act of Parliament.]—*Ex p. SELWYN* (1872), 36 J. P. Jo. 54.

1018. To magistrate to state a case—Magistrate's order already obeyed.]—On an application for a warrant under Small Tenements Recovery Act, 1838 (c. 74), the magistrates found as a fact that the person who applied for a warrant was the duly authorised agent of the landlord, & made an order that unless the tenant went out in ten days a warrant would issue. On an application for a mandamus to the magistrate to state a case:—*Held*: the finding of the magistrate could not be questioned, but as to the issue of the warrant the practice was wrong, & the warrant could not be enforced before twenty-one days after its issue, & its issue could not be postponed for ten days on condition that the tenant gave up the premises, but since in this case no warrant had been issued & the tenant had left the premises, the mandamus would not be granted.—*R. v. HOPKINS* (1900), 64 J. P. 454.

(b) *Compliance involving Breach of Law or Trust.*

1019. Authorisation of unlawful acts—Held illegal by inferior ecclesiastical court.]—The ct. will not grant a mandamus to public officers to carry into execution a proceeding which has been held illegal by an inferior ecclesiastical ct.—*R. v. THOMAS* (1842), 3 Q. B. 589; 3 Gal. & Dav. 485; 11 L. J. Q. B. 295; 6 Jur. 1122; 114 E. R. 632.

1020. —Obedience involving penalty.]—*R. v. EAST BERGHOLT OVERSEER* (1845), 5 L. T. O. S. 100, 221; 9 J. P. Jo. 308, 387.

1021. —Enrolment of order invalid in part.]—The ct. will never grant a mandamus, commanding the enrolment in an inferior ct. of an instrument, which, though in part valid, would in its terms give power to commit unlawful acts; nor will they by mandamus enforce the process of an inferior ct., the judge of which has power to compel obedience to its process.

A writ of mandamus can only be tested in term time. But the ct. will, in its discretion, amend the writ, if improperly tested in vacation, after return has been made to it, such defect being in law the mistake of the officer.—*R. v. CONYERS* (1846), 8 Q. B. 981; 15 L. J. Q. B. 300; 7 L. T. O. S. 160; 10 Jur. 899; 115 E. R. 1143.

1022. —Obedience creating nuisance.]—It is a good answer to a mandamus to a local authority to repair a sewer, that when repaired the sewer will be a nuisance.—*R. v. EPSOM UNION GUARDIANS* (1863), 2 New Rep. 62; 8 L. T. 383; 27 J. P. 468; 11 W. R. 593.

Annotation:—Consd. Meader v. West Cowes L. B., [1892] 3 Ch. 18.

PART VI. SECT. 1, SUB-SECT. 3.— E. (b).

1020 i. Authorisation of unlawful acts—Obedience involving breach of the law.]—A mandamus was refused where a co. could only obey the writ, if issued, by yielding to acts which con-

stituted a breach of the law.—*MCPHERSON v. PERTH ELECTRIC TRAMWAYS, LTD.* (1910), 12 W. A. L. R. 192.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 3.— E. (c).

1027 i. General rule.]—Mere inability

1023. —Compelling approval by local authority—Of plans contrary to statutory requirements.]—

A prerogative writ of mandamus will not be granted to compel a local authority to approve plans of a proposed building which the local authority has in good faith refused to approve upon the ground that the building would contravene Public Health (Buildings in Streets) Act, 1888 (c. 52), by being brought forward beyond the front main wall of the building on one side thereof in the same street.—*R. v. EASTBOURNE CORPN.* (1900), 83 L. T. 338; 64 J. P. 724; 16 T. L. R. 546, C. A.

Annotations:—Consd. R. v. Chiswick U. D. C., *Ex p. Brickell* (1908), 72 J. P. 165. *Refd. R. v. Preston R. D. C.*, *Ex p. Longworth* (1911), 106 L. T. 37. *Mentd. White v. Sunderland Corpn.* (1903), 88 L. T. 592.

1024. —————.]—A prerogative writ of mandamus will not be granted to a local authority to approve plans which they have in good faith refused to approve.—*R. v. CHISWICK URBAN DISTRICT COUNCIL*, *Ex p. BRICKELL* (1908), 72 J. P. 165; 6 L. G. R. 605, D. C.

1025. Authorisation of breach of trust—Illegal application of charitable funds.]—The ct. will not grant a mandamus to churchwardens to assemble the parishioners for the purpose of taking a poll, upon a motion carried by a show of hands at a vestry meeting to do an illegal act, such as to apply a portion of a fund, held in trust for charitable purposes, to the erection of a monument to the memory of the donor of the fund.—*R. v. ST. SAVIOUR'S, SOUTHWARK (CHURCHWARDENS)* (1834), 1 Ad. & El. 380; 3 Nev. & M. K. B. 878; 2 Nev. & M. M. C. 414; 110 E. R. 1252.

1026. —By applicants.]—*R. v. GARLAND*, No. 898, ante.

(c) *Compliance Impossible.*

1027. General rule.]—The ct. will not grant a mandamus to a visitor, if his authority be dubious.

The ct. never grants a mandamus except it indisputably sees that there is a power lodged in the person to whom the mandamus is prayed (LEE, C.J.).—*R. v. ELY (BP.)* (1750), 1 Wm. Bl. 52; 1 Wils. 266; 96 E. R. 28.

1028. —.]—The King is the visitor of St. Catherine's Hall, Cambridge, & the ct. will refuse to interfere by mandamus, to compel the master & fellows to declare one of the fellowships vacant, & to proceed to a new election.—*R. v. ST. CATHERINE'S HALL, CAMBRIDGE* (1791), 4 Term Rep. 233; 100 E. R. 991.

Annotations:—Consd. R. v. Hertford College (1876), 3 Q. B. D. 693. *Refd. R. v. Mousley* (1846), 11 Jur. 56. *Mentd. A.-G. v. Dixie* (1805), 13 Ves. 519.

1029. —.]—The writ of mandamus supposes the required act to be possible, & if it be shown that the party has not the power to do the act commanded, the writ is bad.

Where the compulsory powers of a railway co. to purchase the necessary land had expired before the writ issued, though the co. had, a month before the expiration of the powers, been required by the landowners so to do:—*Held*: the co. could not be compelled by mandamus to purchase & to make a branch railway.—*R. v. LONDON & NORTH WESTERN RY. CO.* (1851), 16 Q. B. 864; 1 E. & B. 199, n.; 6 Ry. & Can. Cas. 634;

to obey the writ has not in all cases been considered a sufficient reason for refusing it.—*LONDON & CANADIAN LOAN & AGENCY CO. v. MORRIS RURAL MUNICIPALITY* (1893), 9 Man. L. R. 377.—**CAN.**

20 L. J. Q. B. 399; 17 L. T. O. S. 92; 15 J. P. 642; 15 Jur. 873; 117 E. R. 1113.

*Annotations:—*Fold. R. v. South Devon Ry. (1851), 17 L. T. O. S. 142. *Consd.* R. v. York, Newcastle & Berwick Ry. (1851), 16 Q. B. 886. *Refd.* R. v. Ambergate Ry. (1853), 1 E. & B. 372; Shackell v. West (1859), 8 W. R. 22. *Mand.* R. v. Dundalk & Enniskillen Ry. (1861), 5 L. T. 25.

1030. From lack of funds.]—To a mandamus, suggesting that trustees of a turnpike road had carried the road over the private grounds of C., but had not, as directed by 4 Geo. 4, c. 95, s. 66, fenced them on each side, & commanding them to do so, a return was made denying that the land belonged to C., alleging that the trustees had made satisfaction to C., under Turnpike Roads Act, 1822 (c. 126), s. 83, for the damage done by so carrying the road, which C. had accepted, had taken security for the amount & had proceeded to enforce the security, & alleging that the trustees had no funds enabling them to execute the required work. C. pleaded, tendering issue on the denial of property, & leaving the other allegations unanswered. Issue was joined, & verdict found for the Crown:—*Held*: (1) the unanswered allegations were no valid return; (2) the want of funds was no excuse after the road had been made; (3) prosecutor, having succeeded on the above plea, was entitled to a peremptory mandamus.—R. v. LUTON ROADS TRUSTEES (1841), 1 Q. B. 860; 1 Gal. & Dav. 248; 10 L. J. Q. B. 263; 113 E. R. 1361.

1031. —.]—The ct. will not issue a writ of mandamus against a public body when it is clearly shown that the performance of the duty sought to be enforced is impossible, by reason of want of funds not involving any default on the part of such body.—*Re* BRISTOL & NORTH SOMERSET RY. CO. (1877), 3 Q. B. D. 10; 47 L. J. Q. B. 48; 37 L. T. 527; 26 W. R. 236; *sub nom.* R. v. BRISTOL & SOMERSET RY. CO., 42 J. P. 101, D. C.

1032. From lack of proper officers.]—R. v. VICTORIA PARK CO., No. 1108, *post*.

1033. Compulsory powers exhausted—Writ issued previously.]—R. v. LONDON & NORTH WESTERN RY. CO., No. 1029, *ante*.

1034. —.]—R. v. SOUTH DEVON RY. CO. (1851), 17 L. T. O. S. 142.

1035. —.]—*GREAT WESTERN RY. CO. v. R.*, No. 928, *ante*.

1036. —.]—Mandamus to complete a railway pursuant to an Act incorporating Lands Clauses Consolidation Act, 1845 (c. 18). Return, *inter alia*, that the undertaking was one to be carried into effect by means of a capital to be subscribed by the promoters, & that the capital had not been subscribed for under a contract, pursuant to s. 16 of the above Act, nor could debts, then or at any time procure it to be so subscribed for. Plea, by way of estoppel, that debts had taken the lands of a third party named, on part of the line, in exercise of the compulsory powers. On demurrer:—*Held*: the return was good, as it showed that a compliance with the command in the writ, which would necessitate the exercise of the compulsory powers, would

be illegal.—R. v. AMBERGATE, ETC. RY. CO. (1853), 1 E. & B. 372; 22 L. J. Q. B. 191; 20 L. T. O. S. 246; 17 Jur. 868; 118 E. R. 475.

*Annotation:—*Refd. R. v. G. W. Ry. (1853), 1 E. & B. 253.

1037. Compulsory powers not exhausted—Probability of exhaustion before return could be made.]—A co. were authorised by statute, in 1846, to make a railway, with compulsory powers for taking lands. By an Act passed in 1849 the work was to be completed in 1853, & the compulsory powers to expire in July, 1851. A rule *nisi* was obtained in Easter term 1851 for a mandamus to complete the railway; & cause was shown on June 2, 1851:—*Held*: the writ ought to issue, though the compulsory powers might expire before a return could be made.—R. v. YORK, NEWCASTLE & BERWICK RY. CO. (1851), 16 Q. B. 886; 6 Ry. & Can. Cas. 648; 20 L. J. Q. B. 503; 17 L. T. O. S. 153; 15 Jur. 904; 117 E. R. 1121.

F. Alternative Remedies.

(a) In General.

1038. Writ will not lie if alternative remedy open.]—The ct. will not grant a mandamus to compel an inferior ct. to give a judgment. A mandamus will not lie where there is other remedy.—WILKINS v. MITCHEL (1698), 1 Ld. Raym. 318; 12 Mod. Rep. 196; 3 Salk. 229; 91 E. R. 1129.

1039. —.]—A mandamus will not lie to overseers to account, unless it appear that there was no other remedy.—R. v. SHEPTON MALLETT OVERSEERS (1698), 5 Mod. Rep. 420; 87 E. R. 712.

1040. —.]—(1) The ct. will not grant a mandamus to the bank to transfer stock because there is a remedy by action on the case if they refuse.

(2) When there is no specific remedy the ct. will grant a mandamus that justice may be done. But where an action will lie for complete satisfaction equivalent to a specific relief, & the right of the party applying is not clear, the ct. will not interpose the extraordinary remedy of a mandamus (LORD MANSFIELD, C.J.).—R. v. BANK OF ENGLAND (1780), 2 Doug. K. B. 524; 99 E. R. 331.

*Annotations:—*As to (2) *Expld.* R. v. I. R. COMES, *Re* Nathan (1884), 12 Q. B. D. 461. *Refd.* R. v. Severn & Wye Ry. (1819), 2 J. & Ald. 646; R. v. Hopkins (1811), 4 Q. B. 160; R. v. Lambourn Valley Ry. (1888), 22 Q. B. D. 463.

1041. —.]—R. v. HERTFORD COLLEGE, No. 1262, *post*.

1042. — Equally convenient, beneficial & effectual.]—Upon affidavit that one of two candidates for a certain office had a majority only by means of illegal votes the ct. granted a mandamus to the corpn. to admit & swear the other, who appeared upon the affidavits to have the greater number of legal votes, & this, although the first was admitted & sworn into the office, there being no other specific, or at least no other such convenient mode of trying the right.—R. v. BEDFORD LEVEL CORPN. (1805), 6 East, 356; 2 Smith, K. B. 535; 102 E. R. 1323.

*Annotations:—*Refd. R. v. Severn & Wye Ry. (1819), 2 NEWCASTLE (1856), 13 U. C. R. 153.—CAN.

1038 ii. —.]—*Re* O'LEARY & BLANDFORD SCHOOL TRUSTEES (1860), 19 U. C. R. 556.—CAN.

1038 iii. —.]—*R. v. PRUDHOMME, Re* NORTH DUFFRIN ELECTION (1887), 4 Man. L. R. 259.—CAN.

1042 i. — Equally convenient, beneficial & effectual.]—Where an alternative remedy equally convenient, beneficial or effective exists, a writ of mandamus will not be granted.—*Re* MCKAY, [1917] 3 W. W. R. 447.—CAN.

1042 ii. — — — "Other specific & U 2"

1030 i. From lack of funds.]—R. (BENNETT) v. KING'S COUNTY, COUNTY COUNCIL, [1908] 2 L. R. 176; 42 L. L. T. 40.—IR.

a. Power exhausted.]—A revising officer appointed to revise & close the lists of electors under Manitoba Election Act, 1902, c. 52, had power to continue his sitting to a subsequent day than that appointed if necessary, to enable him to hear & dispose of all applications brought before him. Before the hearing of an application for a mandamus to him to compel him to re-open his ct. for the purpose of hearing further applications to be

placed on the lists, he became *functus officio*:—*Held*: the issue of a mandamus to the revising officer as asked for should be refused, as it would be fruitless & futile.—R. v. BONNAR (1903), 14 Man. L. R. 467.—CAN.

PART VI. SECT. 1, SUB-SECT. 3.—F. (a).

1038 i. Writ will not lie if alternative remedy open.]—A mandamus will be granted only where the appot. has no other specific legal remedy, not where such remedy exists, but is unproductive.—HUGHES v. MUTUAL FIRE INSURANCE CO. OF THE DISTRICT OF

Sect. 1.—The prerogative writ: Sub-sect. 3, F. (a).]

B. & Ald. 646; R. v. Hertford College (1878), 3 Q. B. D. 693. **Mentd.** A.-G. v. Hotham (1823), Turn. & R. 209; R. v. Hamsden (1835), 3 Ad. & El. 456; Darley v. R. (1846), 12 Cl. & Fin. 520.

1043. ———.]—(1) Where, by custom in a parish, the rector nominates one churchwarden & the parishioners the other, & the rector nominated as churchwarden a person, who was not resident, nor the occupier of any house or land in the parish, & the person so appointed was afterwards sworn into office, & it was desired to question the validity of the appointment, on the ground that the person appointed was not legally qualified:—**Held**: an application for a mandamus to the rector to nominate a churchwarden was a proper course for that purpose, & a rule for a mandamus would be made absolute.

(2) It is well settled that where there is a remedy equally convenient, beneficial & effectual, a mandamus will not be granted. This is not a rule of law but a rule regulating the discretion of the ct. in granting writs of mandamus, & unless the ct. can see clearly that there is another remedy equally convenient, beneficial & effectual, the writ of mandamus will be granted provided the circumstances are such in other respects as to warrant the granting of the writ (HILL, J.).

(3) A proceeding by *quo warranto* will lie for usurping an office, whether created by charter alone or under the authority of an Act of Parliament, provided the office be of a public nature & a substantive office. In my opinion the office of churchwarden does not come within that rule (HILL, J.).—**Re** BARLOW (1861), 30 L. J. Q. B. 271; 5 L. T. 289; 25 J. P. 727.

Annotations:—As to (2) **Consd.** R. v. Lambourn Valley Ry. (1885), 22 Q. B. D. 463; R. v. Leicester Union, [1899] 2 Q. B. 632. **Refd.** R. v. Hertford College (1878), 3 Q. B. D. 693; R. v. Joint Stock Cos. Registrar (1888), 21 Q. B. D. 131; R. v. Incorporated Law Soc., [1895] 2 Q. B. 456.

———.]—(1) The granting of a prerogative writ of mandamus is discretionary, & such writ will not be granted where there is another remedy equally convenient, beneficial & effectual, open to appct. at the time when it becomes necessary to resort to one or other of such remedies.

(2) The ct. will not grant a prerogative writ of mandamus to enforce the registration of a transfer of shares in a co., as the remedies provided by C. L. P. Act, 1854 (c. 125), s. 68, & Cos. Act, 1862 (c. 89), s. 35, are more convenient than proceeding by mandamus.

(3) In 1854, a remedy which did not exist before was given by the legislature, viz.: an action of mandamus, which is in fact for a decree ordering the performance of the duty which the ct. thinks ought to be done (MANISTY, J.).—**R. v. LAMBOURN VALLEY RY. CO.** (1888), 22 Q. B. D. 463; 58 L. J. Q. B. 136; 60 L. T. 54; 53 J. P. 248; 5 T. L. R. 78, D. C.

Annotations:—As to (1) **Consd. & Expld.** R. v. St. George the Martyr, Southwark Vestry (1892), 61 L. J. Q. B. 398. **Consd.** R. v. St. Giles, Camberwell Vestry (1897), 66 L. J. Q. B. 337; Smith v. Chorley District Council, [1897] 1 Q. B. 532; R. v. Wilts & Berks Canal Co., *Ex p.* Berkshire County Council (1912), 107 L. T. 765. **Refd.** R. v. Incorporated Law Soc. (1895), 64 L. J. Q. B. 797; Davies v. Gas Light & Coke Co., [1909] 1 Ch. 248. As to (2) **Distd.** R. v. L. & N. W. Ry., [1894] 2 Q. B. 512.

1045. ———.]—The right given to holders of stock & debentures by Cos. Clauses Consolidation Act, 1845 (c. 16), ss. 45, 63, & by Cos. Clauses Act, 1863 (c. 118), s. 28, of inspecting the registers of a co. can be enforced by an injunction restrain-

ing interference by the co. with the stockholder in the exercise at all reasonable times of his statutory right, without his being compelled to apply for a mandamus calling upon the directors to allow inspection.—**HOLLAND v. DICKSON** (1888), 37 Ch. D. 669; 57 L. J. Ch. 502; 58 L. T. 845; 36 W. R. 320; 4 T. L. R. 285.

Annotations:—**Consd.** Davies v. Gas Light & Coke Co., [1909] 1 Ch. 708. **Mentd.** Muttar v. Eastern & Midlands Ry. Co. (1888), 38 Ch. D. 92; Board v. African Consolidated Land & Trading Co., [1898] 1 Ch. 596.

1046. ———.]—**R. v. JOINT STOCK COS. REGISTRAR**, No. 1152, *post*.

1047. ———.]—**R. v. THOMAS**, No. 1092,

1048. ———.]—**R. v. LEICESTER UNION**, No. 901, *ante*.

1049. ———.]—A metropolitan borough council in assessing, under Local Government Act, 1888 (c. 41), the compensation to be paid on the abolition of his office to an officer, who had not been required to devote his whole time to the duties of the office, in accordance with what they ascertained to be the practice of the Treasury in assessing the compensation of civil servants, calculated the compensation as if the officer's whole time had been required, & deducted 25 per cent. from the amount so arrived at:—**Held**: the right of appeal to the Treasury given by s. 120 (4) was not so adequate a remedy as mandamus, & a mandamus ought to issue to compel the council to perform their duty.

It is now well established that if a body charged with the performance of a public duty do not discharge it, a mandamus will lie to compel them to discharge it (LORD ALVERSTONE, C.J.).—**R. v. STEPNY CORPN.**, [1902] 1 K. B. 317; 71 L. J. K. B. 238; 86 L. T. 21; 66 J. P. 183; 50 W. R. 412; 18 T. L. R. 98; 46 Sol. Jo. 106.

Annotation:—**Refd.** R. v. Port of London Authority, *Ex p.* Kynoch, [1919] 1 K. B. 176.

1050. ———.]—**R. v. BERMONDSEY BOROUGH COUNCIL**, *Ex p.* BERMONDSEY GUARDIANS, No. 1147, *post*.

1051. ———.]—**Defending summons for payment of rate.**—After the allowance of a poor rate by the justices, the overseers inserted, in the left hand margin of the rate book opposite the entries relating to certain lands, the names of six persons who were entitled to rights of common over such land under a local Act, but whose names did not appear in the valuation list:—**Held**: even if there had been an assertion that they were ratepayers, mandamus would not have been the proper remedy, there being an equally effective remedy by defending any summonses for enforcing payment that might be served upon them.—**R. v. MONKEN HADLEY OVERSEERS**, *Ex p.* HARNETT (1910), 74 J. P. 169; 8 L. G. R. 363, D. C.

1052. ———.]—**Compelling governors of charity to appoint person nominated as almoner.**—Clause 19 of the scheme made under the Endowed School Act, 1869 (c. 56), for the management of Christ's Hospital provided that a certain number of the council of almoners should be appointed by the governors "on the recommendation of," among other bodies, the Lord Mayor & Aldermen of the City of London. The governors who contended that they had a discretion as to appointing a person so recommended, refused to appoint a person recommended by the Lord Mayor & Aldermen:—**Held**: mandamus was the proper remedy to compel the governors to perform the duty of appointing the person recommended.

adequate remedy."—The fact that appct. for a mandamus has other remedies, is no bar to its issue unless

they amount to "adequate remedy," which means a remedy "equally

beneficial & effectual."—**Re NATHAN & RAMANATHAN** (1916), 1 L. L. 40 Mad. 125.—**IND.**

There now remains the question whether in this case mandamus is the proper remedy. I think it is. I do not think that either of the processes suggested here as alternative remedies is equally convenient, beneficial or effectual (DARLING, J.).—*R. v. CHRIST'S HOSPITAL (GOVERNORS)*, *Ex p. DUNN*, [1917] 1 K. B. 19; 85 L. J. K. B. 1494; 115 L. T. 545; 80 J. P. 423; 32 T. L. R. 594; 14 L. G. R. 975, D. C.

1053. —.]—The ct. refused a mandamus which was applied for in order to raise the question whether the elections of certain officers ought to be annual, there being another remedy open to the parties making the application.—*R. v. CHESTER CORPN.* (1813), 1 M. & S. 101; 105 E. R. 38.
*Annotations:—**Reid. R. v. Salway* (1829), 9 B. & C. 424; *R. v. Attwood* (1833), 4 B. & Ad. 481.

1054. —.]—*R. v. PAVEMENTS COMRS.*, No. 1085, *post*.

1055. — *Debt due from public body—Limitation of action.*—*Semble*: where a debt is clearly due from a public body, & for the recovery of which the creditor has no remedy but by a writ of mandamus, the ct. will grant the writ, although, if there were a remedy by action, Stat. Limitations might present a difficulty if pleaded in bar.—*R. v. SHADWELL PAVING ACT COMRS.* (1828), 6 L. J. O. S. M. C. 57.

1056. — *Contract not under seal.*—A rule nisi having been obtained for a mandamus to a railway co. to summon a jury to assess compensation for damage under their Act, an agreement was entered into by their agent with claimant. Upon this agreement the proceedings for the mandamus were discontinued. On breach of the agreement:—*Held*: as the agreement was not under the seal of the co., it could not be enforced by action, & a mandamus would be granted.—*R. v. BRISTOL & EXETER RY. CO.* (1845), 3 Ry. & Can. Cas. 777; 5 L. T. O. S. 215; 9 J. P. Jo. 309.

1057. — *Remedy in applicant's own hands.*—The Conservators of Bedford Level moved for a mandamus to landowners to amend & heighten certain banks within the level, which they were liable to repair *ratione tenuræ*, & which were alleged, but not admitted, to be in a dangerous state:—*Held*: the writ would be refused, inasmuch as 15 Car. 2, c. 17, s. 5, gave the conservators, within the level, the authority of Comrs. of Sewers, & therefore they had a sufficient remedy in their own hands.—*R. v. GAMBLE* (1839), 11 Ad. & El. 69; 3 Per. & Dav. 122; 9 L. J. Q. B. 2; 113 E. R. 339.

*Annotations:—**Consd. R. v. Leicester Union*, [1899] 2 Q. B. 632. *Reid. R. v. Bristol Dock Co.* (1841), 5 J. P. 546.

1058. —.]—A mandamus will not be granted, commanding overseers to set out in their accounts the particular items of which certain charges therein are composed, for the information of the auditor, this officer having a remedy in his own hands for the neglect to do so, namely, disallowance of the account furnished. It has long been a settled rule of law, that where a party has any other legal remedy for any wrong or omission, this ct. will not interfere by mandamus (WIGHTMAN, J.).—*R. v. HALIFAX OVERSEERS* (1841), 10 L. J. M. C. 81; 5 J. P. 610.

1059. —.]—*R. v. BATH TOWN-COUNCIL* (1847), 9 L. T. O. S. 245; 11 J. P. Jo. 437.

1060. — *Duty of public nature.*—A mandamus was directed to the overseers of C., commanding them to deliver to prosecutor, as collector

of the poor rates for the new division of the parish, the rate books from Apr. 5, 1855 to Jan. 10, 1856, for the purpose of enabling him to fulfil his duty as collector.

There was not, & is not, any legal impediment to the books being delivered to him by defts.; & they have been guilty of a breach of duty in withholding them. The duty being of a public nature, & there being no other adequate remedy than a mandamus, its performance may be enforced by that process (WILLIAMS, J.).—*R. v. CHRISTCHURCH OVERSEERS* (1857), 7 E. & B. 421; 27 L. J. M. C. 23; 29 L. T. O. S. 328; 3 Jur. N. S. 1074; 5 W. R. 755; 21 J. P. Jo. 533; 119 E. R. 1303, Ex. Ch.

1061. —.]—*R. v. INLAND REVENUE COMRS.*, *Re NATHAN*, No. 894, *ante*.

1062. — *Mandamus to levy rate—Adjustment of liability by agreement or arbitration.*—*TORQUAY CORPN. v. COCKINGTON URBAN DISTRICT COUNCIL* (1900), 44 Sol. Jo. 760.

*Annotation:—**Mentd. Brooks, Jenkins v. Torquay Corpn. & Newton Abbot R. D. C.* (1901), 85 L. T. 785.

1063. — *To Master of Crown Office—Mandamus to summons grand jury under Middlesex Grand Juries Act, 1872 (c. 52).*—A rule had been granted calling upon the Master of the Crown Office to show cause why he should not summon a grand jury of Middlesex in the K. B. Div. under the above Act:—*Held*: the rule must be discharged on the ground that the affidavit on which it was granted was irregular & because there was another remedy open to appt.—*R. v. CROWN OFFICER (MASTER OF)* (1913), 29 T. L. R. 427, D. C.

1064. *Alternative remedy doubtful.*—*R. v. NOTTINGHAM OLD WATER WORKS CO.*, No. 922, *ante*.

1065. *Alternative remedy inconvenient & obsolete.*—(1) A local Act, 47 Geo. 3, c. cxxxii, s. 2, provided that for a competent provision for the rector of the parish it should be lawful for the churchwardens, etc. of the parish in vestry assembled to levy a rate to the amount of £100 a year upon the inhabitants of the parish, & in case they should refuse or neglect to make such assessment the inhabitants of the parish should forfeit & pay to the rector for the time being £500 for every offence. The vestry refused to make the rate, & upon a rule for a mandamus to compel them to levy the rate:—*Held*: as the procedure & remedy given under the local Act were uncertain, inconvenient, & practically obsolete the procedure by writ of mandamus was applicable, & ought to be applied, & the rule would be made absolute.

(2) The decision in the *R. v. Lambourn Valley Ry. Co.* [No. 1044, *ante*] is intended to apply, & must be understood as applying only to a case where the duty sought to be enforced, as well as the right to claim are in substance of a private nature & that they do not extend to any case where the duties sought to be enforced are merely of a public nature (WRIGHT, J.).—*R. v. ST. GEORGE THE MARTYR, SOUTHWARK, VESTRY* (1892), 61 L. J. Q. B. 398; 67 L. T. 412; 56 J. P. 821; 8 T. L. R. 298, D. C.

*Annotation:—**As to (1) Consd. Smith v. Chorley District Council*, [1897] 1 Q. B. 532.

1066. *Alternative remedy inadequate.*—By London Government Act, 1899 (c. 14), s. 11 (1), the council of metropolitan boroughs are made the overseers of the parishes within their borough. The London County Council under County Rates

1064 i. *Alternative remedy doubtful.*—A mandamus was granted where appl.'s claim was for injury by the construction of a railway upon land which he occupied as lessee, as it was not clear

that he could recover damages by action.—*Re SHADE & GALT & GUELPH RY. CO., Re MCNAUGHTON & GALT & GUELPH RY. CO.* (1856), 13 U. C. R. 577.—CAN.

1066 i. *Alternative remedy inadequate—Too slow—Undesirable.*—The existence of another legal remedy is no objection to the granting of the writ of mandamus, where such other remedy

Sect. 1.—The prerogative writ: Sub-sect. 3, F. (a) & (b) i., ii. & iii.]

Act, 1852 (c. 81), & s. 11 (2) of the above Act, issued a precept to the P. Borough Council requiring them to pay a certain amount, their proportion of the county rate. The Metropolitan Asylums Board also issued, under the Metropolitan Poor Act, 1867 (c. 6), s. 56, a precept to the P. Guardians, requiring them to make a certain payment, & the guardians served an order for contribution on the borough council as overseers. The borough council refused to pay either demand, & applications were made for writs of mandamus commanding the borough council to pay the sums, & if necessary, to make & levy a rate. The borough council contended that in either case there was a statutory & only remedy, namely by distress; & that if the ct. had a discretion, it ought to refuse to grant a mandamus, as the remedy by distress was equally convenient & effectual as by mandamus:—*Held*: (1) London Government Act did not specify any remedy for breach of the duty imposed on the borough council by that Act, & therefore, as regards the precept of the London County Council, the ct. could grant mandamus. (2) As regards both the precepts, the remedy by distress, assuming that it did apply to the London County Council rate, was quite inadequate, & mandamus was the only effective means of enforcing the performance of the borough council's public duty.—*R. v. POPLAR BOROUGH COUNCIL* (No. 1), [1922] 1 K. B. 72; 91 L. J. K. B. 163; 126 L. T. 189; 85 J. P. 273; 37 T. L. R. 963; 66 Sol. Jo. (W. R.) 2; 19 L. G. R. 675, C. A.

Annotation:—*Consd. R. v. Woolwich B. C., Ex p. Woolwich Union Grdns.* (1922), 20 L. G. R. 820.

Particular alternative remedies open to applicant.]

--See Sub-sect. 3, F. (b), *post*.

(b) Particular Alternative Remedies.

i. Actions at Law.

1067. General rule.—A mandamus to a visitor to exercise his power during a vacancy was denied, an action at law being the proper remedy.—*R. v. DUNELMENSEM* (Bp.) (1758), 1 Burr. 567; 97 E. R. 451.

1068. —.]—*R. v. BANK OF ENGLAND*, No. 1040, *ante*.

1069. —.]—A corporator who was entitled to divide a certain share of the profits of a fishery which the corporators worked & enjoyed in partnership, was suspended from the perception of his profits until he paid a fine imposed by a bye-law, with the breach of which he was charged:—*Held*: a mandamus to restore him to his office would be refused, he being still an officer, & having a remedy by an action for the tort against any who disturbed him in the lawful perception of his profits, if the bye-law were illegal, or he were not guilty of a breach of it, or had been unlawfully suspended, or, considering the corporators as partners in the fishery, he having a remedy in

equity for his share of the partnership funds unjustly withheld from him.—*R. v. WHITSTABLE FREE FISHERS, ETC.* (1806), 7 East, 353; 3 Smith, K. B. 319; 103 E. R. 136.

1070. —.]—A mandamus will not be granted to enforce the general law of the land, if an action will lie, *e.g.* to enforce the liabilities of common carriers, although in some cases it will be granted, even where an indictment may be preferred.—*Ex p. ROBINS* (1839), 7 Dowl. 566; 1 Will. Woll. & H. 578; 3 Jur. 103.

1071. —.]—A party had pulled down & rebuilt a party-wall, but had not replaced the interior decorations in the adjoining house which had been on the old wall:—*Held*: a mandamus was not grantable against him at the instance of the tenant of the adjoining house, but the remedy was by action.—*R. v. PONSFORD* (1848), 12 L. J. Q. B. 313; 1 L. T. O. S. 234; 7 J. P. 597; 7 Jur. 767.

1072. —.]—A railway Act enacted that the co. established by it should, in a given event, pay a certain other co. a sum not exceeding a given amount, by way of compensation for the loss of tolls by the latter co. The given event having happened:—*Held*: mandamus was not the proper mode of compelling the payment of the compensation money, as debt would lie on the statutory obligation.—*R. v. HULL & SELBY RY. CO.* (1844), 6 Q. B. 70; 3 Ry. & Can. Cas. 705; 13 L. J. Q. B. 257; 8 Jur. 491; 115 E. R. 27.

Annotations:—*Refd. R. v. Southampton Port Comrs.* (1861), 1 B. & S. 5. *Mentd. Hutchinson v. Gillespie* (1856), 11 Exch. 798.

1073. —.]—A writ of mandamus to the Tithe Comrs. stated that there were certain differences between certain landowners of the parish of II. & the vicar as to whether old inclosed lands were wholly exempt from the render of great tithes & tithes of wool & lamb, or, if not exempt, whether they were subject to the payment of 1s. per acre yearly to the improprator of the parish for & in lieu of great tithes & tithes of lamb & wool, & whether new inclosed lands were wholly exempt from great tithes & tithes of wool & lamb, & commanded the Comrs. to determine the difference so pending. On demurrer to the return to the writ:—*Held*: the question raised by the whole record was purely one of title between the improprators & the vicar which might still be contested under the provisions of Tithe Act, 1836 (c. 71), s. 71, & judgment would be given for the Comrs.—*R. v. TITHE COMRS.* (1852), 18 Q. B. 156; 21 L. J. Q. B. 208; 19 L. T. O. S. 46; 16 Jur. 857; 118 E. R. 58.

1074. —.]—*R. v. KEIGHLEY UNION GUARDIANS* (1876), 40 J. P. Jo. 70, D. C.

Annotation:—*Refd. R. v. Lewisham Union*, [1897] 1 Q. B. 498.

1075. — *Detinue or trover.*—A mandamus to churchwardens to deliver up to the vestry clerk the vestry book which had been taken away by violence was refused.

would be inadequate, too slow, or of a kind undesirable to be enforced.—*Re GLENEGSHIRE, Ex p. SEALEY* (1885), 11 V. L. R. 64.—AUS.

1066 ii. —.]—Where the alternative remedy is not so efficacious as that by mandamus, the right to the latter is not taken away.—*Re NEW BRUNSWICK & CANADA RY. CO., Ex p. A.-G.* (1878), 1 P. & B. 667.—CAN.

PART VI. SECT. 1, SUB-SECT. 3.—F. (b) i.

1067 i. General rule.—Mandamus will not lie where the true remedy is by

action for damages.—*RUTTER v. ZEEHAN DISTRICT HOSPITAL, HARRIS v. ZEEHAN DISTRICT HOSPITAL* (1912), 8 Tas. L. R. 90.—AUS.

1067 ii. —.]—*Re COMMERCIAL BANK OF CANADA & LONDON GAS CO.* (1860), 20 U. C. R. 233.—CAN.

1067 iii. —.]—*Re NEWCASTLE (SHERIFF)* (1831), Dra. 503.—CAN.

1067 iv. —.]—*ELZEVIR SCHOOL TRUSTEES v. ELZEVIR TOWNSHIP* (1862), 12 C. P. 548.—CAN.

1067 v. —.]—*Re LONDON, HURON & BRUCE RY. CO. & EAST WAWANOSH*

TOWNSHIP (1874), 36 U. C. R. 93.—CAN.

1067 vi. —.]—*GRAND JUNCTION RY. CO. v. PETERBOROUGH COUNTY CORPN.* (1882), 8 S. C. R. 76.—CAN.

1067 vii. —.]—*R. v. LYONS* (1809), 1 R. 3 C. L. 484.—IR.

1067 viii. —.]—*REILLY v. COOTE-HILL URBAN DISTRICT COUNCIL* (1900), 35 I. L. T. 33.—IR.

b. Action to try title to land.—On an application for a mandamus to a ry. co. to appoint an arbitrator to determine compensation for land taken, it appeared that the co. disputed the

If the muniments belonged to him as annexed to his office he may bring an action of detainer or trover (LORD ELLENBOROUGH, C.J.).—ANON. (1816), 2 Chit. 255.

1076. ———.]—*Ex p.* HOLLOWAY, No. 1282, *post*.

ii. Actions of Mandamus.

1077. For enforcement of private rights & duties—Transfer of shares.]—*R. v.* LAMBOURN VALLEY RY. CO., No. 1044, *ante*.

1078. ——— Not when duties of public nature involved.]—*R. v.* ST. GEORGE THE MARTYR, SOUTHWARK, VESTRY, No. 1065, *ante*.

1079. ———.]—A rule for a prerogative writ of mandamus is not the proper mode for enforcing a statutory obligation which can be made the subject of an action for the breach of the statutory duty in which a mandamus may be claimed.—*R. v.* LONDON & NORTH WESTERN RY. & GREAT WESTERN RY. (1896), 65 L. J. Q. B. 516; 74 L. T. 624, D. C.

1080. ———.]—The owner of premises in the metropolis alleged that a defective drainage pipe on his premises was a sewer within Metropolis Management Act, 1855 (c. 120), & therefore, repairable by the vestry. The vestry denied that the pipe was a sewer:—*Held*: a prerogative writ of mandamus ought not to be issued to the vestry directing them to repair the pipe, the proper proceeding being for the owner of the premises to bring an action against the vestry for a declaration of right for a mandamus.—*R. v.* ST. GILES, CAMBERWELL, VESTRY (1897), 66 L. J. Q. B. 337; 61 J. P. 217; 45 W. R. 335; 13 T. L. R. 162; 41 Sol. Jo. 227, D. C.

1081. ———.]—*Ex p.* PAGE (1897), 14 T. L. R. 61, C. A.

1082. ———.]—A canal co., the predecessors in title of defts., acting under powers conferred upon them by a private Act of Parliament, made a canal, & in so doing cut through an old highway, which they carried by a new bridge over the canal. The canal under the bridge was no longer used for navigation, & the bridge, owing to its steepness & narrowness, was very inconvenient for the traffic of the district. The bridge having fallen into disrepair & become dangerous, the ct. granted a mandamus to compel the canal co. to repair the bridge.

I doubt whether the duty of repairing a bridge is too uncertain a duty to be enforced by the prerogative writ of mandamus (LORD ALVERSTONE, C.J.).

With regard to the question whether an action for mandamus would have been an alternative remedy, an action for a mandamus only applies where private rights alone are involved & is not intended to be substituted for the prerogative writ of mandamus where public rights are involved.

appt.'s title, & claimed title in themselves.—*Held*: the appt. must be left to an action to try the title.—*Re* JONES & RHIE & NIAGARA RY. CO. (1876), 25 C. P. 559.—CAN.

c. ——— *Trespass*.]—A mandamus to restore public books obtained by fraud was refused, as appt. might bring trespass, claiming a mandamus in the action.—*Re* MCLAY (1864), 24 U. C. R. 54.—CAN.

PART VI. SECT. 1, SUB-SECT. 3.— F. (b) ii.

1077 i. For enforcement of private rights & duties—Transfer of shares.]—Where the remedy sought is only in respect of private rights, e.g. to compel a co. to register transferees of shares

& to issue certificates, mandamus can only be obtained in an action.—*HITCHINGS v. CANADA NATIONAL FIRE INSURANCE CO.*, [1917] 2 W. W. R. 41.—CAN.

1077 ii. ——— *Issue of debentures*—*corporation*.]—A writ of mandamus to compel the issue of debentures by a municipal corpn. under a bye-law in aid of a railway, will not be granted upon motion, but appt. must bring his action.—*Re* CANADA ATLANTIC RY. CO. *v.* CAMBRIDGE TOWNSHIP (1883), 3 O. R. 291.—CAN.

1077 iii. ———.]—An action was brought to compel defts. to receive & transport packages of intoxicating liquor sold from plffs.' warehouse to persons in other provinces or in foreign

Therefore the power to bring an action for mandamus is not an alternative remedy which would prevent this rule being made absolute. . . . An indictment is not regarded as an alternative remedy in this kind of case because it does not of necessity compel the bridge or road to be repaired for the benefit of the public (LORD ALVERSTONE, C.J.).—*R. v.* WILTS & BERKS CANAL CO., [1912] 3 K. B. 623; 82 L. J. K. B. 3; 107 L. T. 765; 77 J. P. 24; 10 L. G. R. 1033, D. C.

1083. Whether power to grant prerogative writ limited.]—The ct. will not refuse to grant a prerogative writ of mandamus in every case in which an action of mandamus would lie.—*R. v.* LONDON & NORTH WESTERN RY. CO., [1894] 2 Q. B. 512; 63 L. J. Q. B. 695; 58 J. P. 719; 10 R. 359, D. C.
Annotations:—*Reid*. *R. v.* St. Giles, Camberwell, Vestry (1897), 66 L. J. Q. B. 337; *Smith v. Chorley District Council*, [1897] 1 Q. B. 532.

iii. Appeals.

1084. By writ of error.]—In an action of debt in the Palace Ct. deft. having suffered judgment to go by default, that ct. refused to allow plff. to sign final judgment, as by law, it was contended, he might do, but this ct. refused a mandamus to compel the inferior ct. to allow final judgment to be signed, leaving plff. to his remedy by writ of error, when he had taken the necessary steps for that purpose.—*ARDEN v. CONNELL* (1822), 5 B. & Ald. 885; 106 E. R. 1415; *sub nom.* *R. v. CONYNGHAM* (MARQUIS), *ARDEN v. CONNELL*, 1 Dow. & Ry. K. B. 529.

Annotations:—*Mentid*. *Weald v. Brown* (1832), 2 Cr. & J. 672; *Cousens v. Paddon* (1835), 5 Tyr. 535; *Nicholls v. Tuck* (1853), Bail Ct. Cas. 194.

1085. To quarter sessions.]—(1) The writ of mandamus is a writ issuable only in defect of any other specific legal remedy.

(2) Where a power of appeal to the sessions is given, & previous to such appeal being made, application is made for a mandamus, it will be rejected, & the party so applying will be referred to that ct.—*R. v. PAVEMENTS COMRS.* (1827), 5 L. J. O. S. M. C. 65.

1086. ———.]—The ct. will not grant a mandamus to overseers to produce their appointment for the inspection of a rated inhabitant, the defect suggested in such appointment being properly the subject of an appeal to the sessions.—*R. v. HARRISON* (1846), 9 Q. B. 794; 2 New Mag. Cas. 21; 2 New Sess. Cas. 490; 16 L. J. M. C. 33; 8 L. T. O. S. 157; 10 Jur. 981; 115 E. R. 1481.

1087. ———.]—S. applied for a renewal of a certificate to sell beer to be consumed on the premises, which the justices refused. S. did not demand a statement in writing of the ground of the decision pursuant to Wine & Beerhouse Act, 1869 (c. 27), s. 8; & the justices did not state such ground in writing. S. having obtained a rule for a mandamus to the justices to grant the

countries, plffs. moved for an interim mandatory order:—*Held*: the order sought was the order grantable in an action, & not the prerogative writ of mandamus.—*GRAHAM & STRANG v. DOMINION EXPRESS CO.*, [1920] 48 O. L. R. 83.—CAN.

PART VI. SECT. 1, SUB-SECT. 3. F. (b) iii.

d. *General rule*.]—A mandamus to compel a ct. to proceed with an action refused, because appt. had a remedy by appeal.—*MEYERS v. BAKER* (1866), 26 U. C. R. 16.—CAN.

e. ———.]—Mandamus is not grantable as of right, but is founded on the want of a specific remedy, & will not be granted in cases where plff.

Sect. 1.—The prerogative writ: Sub-sect. 3, F. (b) iii., iv., v. & vi.]

application:—*Held*: the rule must be discharged as the proper remedy was by appeal.—*R. v. ASHTON-UNDER-LYNE JJ.* (1873), 37 J. P. Jo. 85.

1088. —]—Where justices had refused a certificate for a licence to sell beer, etc., not to be consumed on the premises, on other grounds than those prescribed by Wine & Beerhouse Act, 1869 (c. 27), s. 8:—*Held*: a mandamus would be refused on the ground that appct. might have appealed to quarter sessions.—*R. v. SMITH* (1873), L. R. 8 Q. B. 146; 42 L. J. M. C. 46; 21 W. R. 382; *sub nom.* *R. v. SOUTHPORT JJ.*, 28 L. T. 129; 37 J. P. 214.

Annotations:—*Distd. R. v. Thomas*, [1892] 1 Q. B. 426. *Refd. R. v. Farquhar* (1874), L. R. 9 Q. B. 258; *R. v. Dodds*, [1905] 2 K. B. 40.

1089. — *Remedy by appeal elected—Whether bar to proceedings for mandamus.*—*K.*, the licensed tenant of premises in the country, abandoned possession in Dec., & the house was shut up. At the annual licensing meeting in Sept., neither *K.* nor anyone for him asked for a renewal, but, the house being unoccupied, *H.*, the landlord, asked for renewal, either in *K.*'s name or his own, which the justices refused. A new tenant, *P.*, entered after the annual meeting was over, & after notice, applied to transfer sessions on Oct. 12, but his application was refused, & on appeal to quarter sessions this refusal was confirmed on Jan. 6 following:—*Held*: after *P.*'s appeal to quarter sessions, he was precluded from asking for a mandamus, as in doing so he had elected his remedy, & his present application was for a mandamus to the wrong justices.—*R. v. NEWCASTLE-UPON-TYNE LICENSING JJ.* (1887), 51 J. P. 244; 3 T. L. R. 351, C. A.

1090. —]—*P.*, the licensee of a beerhouse, was served with notice of opposition to the renewal of his licence by the superintendent of police, who appeared to oppose & was heard, & the justices refused the renewal. The owners of the house appealed to quarter sessions:—*Held*: after appealing to quarter sessions, applt., having elected his remedy, could not obtain a mandamus to the licensing justices.—*R. v. BRISTOL LICENSING JJ.*, *R. v. GLOUCESTERSHIRE JJ.* (1893), 68 L. T. 225; 57 J. P. 486; 9 T. L. R. 273; *sub nom.* *R. v. GLOUCESTERSHIRE JJ.*, *R. v. BRISTOL LICENSING JJ.*, 41 W. R. 379; 37 Sol. Jo. 269; 5 R. 276, D. C.

Annotation:—*Mentd. R. v. Kent JJ.*, [1896] 2 Q. B. 306.

1091. —]—The licensing justices of *F.* gave notice that they intended to object to the renewal of certain licences, having themselves previously taken steps to get information as to the requirements of the division & the number of licensed houses, & on that information they considered there were too many licensed houses for the population. The applications were made & refused. The licence holders thereupon entered an appeal to quarter sessions, & also moved & obtained a rule *nisi* for a mandamus directed to the justices:—*Held*: the notices of appeal to the quarter sessions were no bar to proceedings for mandamus, & conversely that the failure of the application for a mandamus did not invalidate the notice of appeal.—*R. v. HOWARD, ETC., FARNHAM*

LICENSING JJ. (1902), 71 L. J. K. B. 754; *sub nom. R. v. FARNHAM JJ.*, 66 J. P. 579; 50 W. R. 573; 18 T. L. R. 614; 46 Sol. Jo. 486, D. C.; *affd.* on other grounds, [1902] 2 K. B. 363, C. A.

1092. — *Where remedy by appeal inadequate—Grounds of decision not stated.*—When justices refuse an application for the licence of a beerhouse licensed on May 1, 1869, & since continuously so licensed, they are bound to state their grounds at the time of refusing the application, & if they do not so state them, a mandamus will be granted commanding them to hear & determine the application.

It is quite possible that there might have been good grounds for an appeal [to quarter sessions] if the grounds of the decision had been announced to the appct., & in that case a mandamus would not be granted, for there would be an adequate remedy by appeal. That rule, however, as to the grant of a mandamus is not inflexible, or applicable in cases of this kind, where a person does not know the grounds of the decision against him & how to shape his appeal (*HAWKINS, J.*).—*R. v. THOMAS*, [1892] 1 Q. B. 426; 66 L. T. 289; 56 J. P. 151; 40 W. R. 478; 8 T. L. R. 299; *sub nom. R. v. BRISTOL JJ.*, 61 L. J. M. C. 141, D. C.

Annotations:—*Mentd. Baldwin v. Dover JJ.*, [1892] 2 Q. B. 421; *Price v. James*, [1892] 2 Q. B. 428; *Symonds v. Wedmore*, [1894] 1 Q. B. 401.

1093. *To poor law board—Appeal pending.*—This ct. refused to make absolute a rule calling upon justices to show cause why they should not issue their warrant for a sum of money placed to the debit of overseers in their accounts, & certified as correct by the poor law auditor, in a case in which there was an appeal pending before the poor law board.—*R. v. DENBIGH JJ.* (1859), 33 L. T. O. S. 145.

1094. *To appeal tribunal—From decision of tribunal under Military Service Acts.*—*W.* applied to the H. local tribunal, under the Military Service Acts, for exemption from military service. The hearing of the application was adjourned. At the beginning of the adjourned hearing three members of the tribunal were present, & that number constituted a quorum. *W.*'s solr. proceeded to explain that *W.*'s absence was due to a business engagement. During this explanation the fourth member of the tribunal arrived. All four members remained until the end of the hearing of the case, & all agreed that the application should be refused. *W.* obtained a rule *nisi* for a mandamus directed to the tribunal on the ground that the fourth member of the tribunal, who was not present during the whole of the proceedings, voted on a question affecting the decision, contrary to Military Service Regs. (Amendment) Order 1916, Part I., s. 2, reg. 5:—*Held*: the rule must be discharged since the application was based on trumpery grounds, & since the appct. had a right to appeal to an appeal tribunal against the decision of the local tribunal.—*R. v. HENDON LOCAL TRIBUNAL, Ex p. WATSON* (1917), 86 L. J. K. B. 1256; 116 L. T. 572; 81 J. P. 212; 15 L. G. R. 616, D. C.

1095. *To law officer.*—*M.*, having applied for letters patent for an alleged invention & having lodged a complete specification, the assistant comptroller, acting for the comptroller, decided in effect that the application could not be accepted

has a remedy by appeal.—*ARCHER v. BRITAIN* (1873), 1 J. R. 69; 2 C. A. 294.—*N.Z.*

1. —]—*BURGESS v. MOODY* (1889), 7 N. Z. L. R. 320.—*N.Z.*

g. —]—*RAWLINS v. REVELL* (1891), 11 N. Z. L. R. 380.—*N.Z.*

h. —]—*SUTHERLAND v. MC-GIMPSEY* (1898), 17 N. Z. L. R. 431.—*N.Z.*

k. *To judge of inferior court—Where remedy by appeal more costly—To consider question of costs.*—The ct. should exercise its discretion in

favour of granting a mandamus ordering the judge of an inferior ct. to consider a question of costs as that remedy was more appropriate, less expensive & more reliable than by way of appeal.—*R. v. BRECHAM & Co., Ex p. CAMERON & Co.*, [1910] V. L. R. 204.—*AUS.*

or allowed to proceed until the complete specification had been amended. M. applied for & obtained a rule *nisi* for a mandamus addressed to the comptroller or his representative to hear & determine the application for a patent, on the ground that the comptroller had exceeded his jurisdiction in refusing the application:—*Held*: even if there was ground of complaint against the comptroller for what had been done, the remedy would be by appeal to the law officer, & the rule must be discharged.—*R. v. PATENTS COMPTROLLER-GENERAL, Ex p. MUNTZ* (1922), 127 L. T. 547; 38 T. L. R. 652; 66 Sol. Jo. 558; 39 R. P. C. 335, D. C.

Appeals from registrar to county court judge.]—*See COUNTY COURTS, Vol. XIII., p. 533, Nos. 848–850.*

Appeals to visitors of charitable corporations.]—*See CHARITIES, Vol. VIII., Part IX., Sect. 2, pp. 385 et seq.; CORPORATIONS, Vol. XIII., p. 413, No. 1328.*

iv. Case Stated.

1096. General rule.]—An information for an offence committed on Mar. 26 was laid under Cruelty to Animals Act, 1849 (c. 92), s. 16, on Apr. 26. The justices, on objection taken, decided that the information was too late. No case was applied for within seven days, & prosecutor applied for a mandamus to hear & determine:—*Held*: as an application for a case to be stated was a more convenient remedy, a rule for mandamus would be refused.—*R. v. WISBECH JJ.* (1890), 54 J. P. 743; 7 T. L. R. 21, D. C.

Annotations:—Refd. Re Monmouthshire JJ., Ex p. Williams (1890), 7 T. L. R. 79; *R. v. Byrde & Pontypool Gas Co., Ex p. Williams* (1890), 60 L. J. M. C. 17.

1097. Case offered by justices—Refused by applicant.]—When a case is offered by sessions, the party to whom it is offered is not bound to accept it & forego the remedy by mandamus.—*R. v. WEST RIDING OF YORKSHIRE JJ.* (1842), 11 L. J. M. C. 84; 6 J. P. 585.

1098. ———.]—On an appeal against an order of removal, the justices quashed the order on a point of law, subject to a case. Resps. afterwards abandoned the case, & applied for a mandamus to compel the justices to hear the appeal:—*Held*: the application for a mandamus could not be entertained, & the rule would be discharged with costs.—*R. v. SUFFOLK JJ.* (1837), 6 Ad. & El. 109; 1 Nev. & P. K. B. 306; Will. Woll. & Dav. 6; 1 J. P. 5, 136; 112 E. R. 42.

1099. Case obtained by applicant—But not brought up.]—Where the quarter sessions have dismissed an appeal upon a point of practice, subject to a case, which appets. for the case have not brought up, this ct. will not, at their instance, grant a mandamus to enter continuances & hear the appeal.—*R. v. WEST RIDING JJ., WARMSWORTH v. DONCASTER* (1834), 1 Ad. & El. 606; 110 E. R. 1339.

Annotation:—Refd. R. v. Suffolk JJ. (1837), 6 Ad. & El. 109.

See, also, No. 1227, post.

1100. ———.]—A district rate was made by the urban district council of B. on a tramway co. & was demanded in writing, but the co. refused to pay. After the lapse of more than fourteen days from the date of the demand proceedings were taken before justices to recover the amount of the rate under Public Health Act, 1875 (c. 55), s. 256. The co. contended that they were liable to pay on one-fourth part only of the net annual value of the tramroad on the ground that it was

a railway within s. 211 (1) (b) of the Act, & that a distress warrant should not be granted for the full amount. The justices decided that the co. had shown sufficient cause for non-payment of the full amount, & reduced the rate in accordance with the co.'s contention & made an order for the reduced amount. Subsequently the rating authority having demanded the reduced amount, & having given a receipt for it, obtained from the justices a case stated for the opinion of the High Ct., but afterwards withdrew the case stated. A rule *nisi* was then obtained calling upon the justices to show cause why they should not hear & determine an application for the issue of a distress warrant for the full amount of the rate:—*Held*: whether the justices were or were not entitled to make an order for a less amount than that appearing on the face of the rate, the ct. would not in the circumstances issue a mandamus to the justices to issue a warrant for the full amount.—*R. v. SHUTTLEWORTH, Ex p. TICKLE* (1908), 72 J. P. 329; 6 L. G. R. 1026, D. C.

1101. Case argued & decided.]—*R. v. CAMBRIDGE-SHIRE JJ.* (1856), 27 L. T. O. S. 104.

v. Certiorari.

Certiorari generally, *see* Part IX., *post*.

1102. To compel justices to rehear cause—On ground of interest of justice in previous proceeding.]

—W., having applied to the licensing justices for a licence for a new hotel, & the three justices who were sitting having refused it, afterwards applied to the ct. for a mandamus to have the case heard again on the ground that B., one of the justices, was interested as owner in one of the licensed houses near the proposed hotel. The affidavits showed that B.'s wife had succeeded to the licensed house, & was tenant for life, but it was a small house without hotel accommodation, & not likely to be injured by the new licence being granted:—*Held*: (1) a mandamus could not be granted because, the decision not having been set aside or quashed on *certiorari*, the case could not be heard again; (2) if a *certiorari* were applied for the affidavits ought to state that the party applying, & his solr. did not know at the time that one of the justices was interested.—*R. v. KENT JJ.* (1880), 14 J. P. 298, D. C.

1103. To compel justices to state case.]—Justices made an order under Dogs Act, 1871 (c. 56), s. 2, that a certain dog, being dangerous, should be kept under proper control & led by a leash by day & chained up by night. On motion to make absolute a rule for a mandamus to the justices to state a case as to whether they had power to specify the manner of control:—*Held*: as the point could have been more conveniently raised by *certiorari*, the rule must be discharged.—*R. v. OWEN, ETC. JJ., Ex p. SCOVELL* (1907), 72 J. P. 60; 52 Sol. Jo. 132, D. C.

vi. Equitable Remedies.

1104. Whether bar to mandamus—If legal right in applicant.]—On a commission of charitable uses it was agreed between the lord of the manor of A. & the inhabitants of W. within the manor, that certain copyhold lands should be let for the maintenance of a stipendiary curate of the chapel of W. to be nominated by a majority of the inhabitants, & to be allowed by the lord, & by him presented to the ordinary for a licence to preach. The usage of nominating, etc. had been pursuant to the agreement. The lord having refused to

PART VI. SECT. 1, SUB-SECT. 3.—F. (b) iv.

1096 i. General rule.]—Mandamus will not be granted where appct. has a remedy by special case.—*R. v. BLACKALL LICENSING COURT, Ex p. CHICONI* (1919), 13 Q. S. R. 4.—**AUS.**

m. — — —.]—Where a county council is liable to repair a bridge the

4 Per. & Dav. 154; 6 Jur. 216, n.; 113 E. R. 873.

Annotations.—*Consd. R. v. Rathmines & Rathgar Improvement Comrs.* (1864), 11 L. T. 281; *A.-G. v. Staffordshire County Council*, [1905] 1 Ch. 336.

1117. —[The ct. will not grant a mandamus requiring parish officers to receive a pauper in obedience to an order of removal. The proper course is by indictment.—*Ex p. DOWNTON OVERSEERS* (1858), 8 E. & B. 856; 27 L. J. M. C. 281; 6 W. R. 224; 120 E. R. 320.

1118. Where indictment not equally beneficial, convenient & effectual.]—*Semle*: an indictment against inclosure comrs. for not obeying an order of sessions directing them to set out a road as a public road, would not be such a remedy to a party, supposing him entitled to have the road so set out, as would make the ct. refuse to interfere by mandamus.—*R. v. DEAN INCLOSURE COMRS.* (1813), 2 M. & S. 80; 105 E. R. 311.

Annotations.—*Refd. R. v. Severn & Wye Ry.* (1819), 2 B. & Ald. 846; *R. v. Jeyes* (1835), 3 Ad. & El. 416; *Ex p. Robins* (1839), 1 Will. Woll. & H. 578. *Mentd. R. v. Cumberland JJ.* (1822), 1 B. & C. 64.

1119. —[Where a railway was made under the authority of an Act of Parliament, by which the proprietors were incorporated, & by which it was provided that the public should have the beneficial enjoyment of the same, & the co. had afterwards taken up the railway:—*Held*: a mandamus might issue to compel the co. to reinstate & lay down again the railway.

If an indictment had been a remedy equally convenient, beneficial & effectual as a mandamus, I should have been of opinion, that we ought not to grant the mandamus, but I think it is perfectly clear, that an indictment is not such a remedy, for a corpn. cannot be compelled by indictment to reinstate the road. The ct. may, indeed, in case of conviction, impose a fine, & that fine may be levied by distress; but the corpn. may submit to the payment of the fine, & refuse to reinstate the road; & at all events a considerable delay may take place. The remedy, therefore, is not so effectual as that by mandamus. I am, therefore, of opinion that the circumstance of the corpn. being liable to an indictment, is no objection to the granting of a mandamus (ABBOTT, C.J.).—*R. v. SEVERN & WYE RY. CO.* (1819), 2 B. & Ald. 646; 106 E. R. 501.

Annotations.—*Consd. R. v. Pagham Sewers Comrs.* (1828), 2 Man. & Ry. K. B. 468; *R. v. Jeyes* (1835), 3 Ad. & El. 416; *R. v. Gamble* (1839), 11 Ad. & El. 69; *R. v. Victoria Park Co.* (1841), 1 Q. B. 288; *R. v. York & North Midland Ry.* (1852), 7 Ry. & Can. Cas. 236. *Refd. Ex p. Robins* (1839), 1 Will. Woll. & H. 578; *R. v. Birmingham & Gloucester Ry.* (1842), 2 Gal. & Dav. 236; *R. v. Clark* (1844), 8 Jur. 489; *Il. v. L. & Y. Ry.* (1852), 22 L. J. Q. B. 57; *Il. v. Poplar B. C.* (No. 1), [1922] 1 K. B. 72. *Mentd. Johnson v. Mid. Ry.* (1849), 4 Exch. 367; *R. v. Kidwelly & Llanelly Canal & Tramroad Co.* (1850), 15 L. T. O. S. 223; *Winch v. Thames Conservators* (1872), L. R. 7 C. P. 458; *Lee Conservancy Board v. Button* (1879), 12 Ch. D. 383; *R. v. G. W. Ry.* (1893), 62 L. J. Q. B. 572; *Darlaston L. B. v. L. & N. W. Ry.*, [1894] 2 Q. B. 694.

1120. —[*Ex p. ROBINS*, No. 1070, *ante*.

1121. —[A dock co. was authorised to make, complete, & maintain a new course or channel for a river, the same to be of equal depth & breadth at the bottom, & of equal inclination on both sides with the old course or channel, taken by them for the purposes of their navigation :

proper remedy is indictment, not mandamus.—*Re JAMIESON & LANARK CORPN.* (1876), 38 U. C. R. 647.—CAN.

n. — *Not building bridge.*—A mandamus to compel the county to build a bridge over a river was refused for the bridge having been built by a joint stock co., the public could not be bound to repair it; & the obligation being very doubtful, the parties were

left to their remedy by indictment.—*Re KINNAR & HALDIMAND COUNTY* (1870), 30 U. C. R. 398.—CAN.

1118 i. Where indictment not equally beneficial, convenient & effectual.]—*Def. co.* obtained an Act enabling them to maintain a line of horse cars in a city, & were required to keep the roadway in repair. *Defts.* having

—*Held*: a mandamus would lie to compel the co. to repair the banks of the new channel, though they might also be liable to indictment.—*R. v. BRISTOL DOCK CO.* (1841), 2 Q. B. 64; 2 Ry. & Can. Cas. 599; 1 Gal. & Dav. 286; 10 L. J. Q. B. 346; 5 J. P. 546; 6 Jur. 216; 114 E. R. 27.

Annotations.—*Consd. R. v. Rathmines & Rathgar Improvement Comrs.* (1864), 11 L. T. 281. *Mentd. York & North Midland Ry. v. R.* (1853), 1 C. L. R. 119.

1122. —[*R. v. KEIGHLEY UNION GUARDIANS* (1876), 40 J. P. Jo. 70, D. C.

Annotation.—*Consd. R. v. Lewisham Union*, [1897] 1 Q. B. 498.

1123. —[*R. v. WILTS & BERKS CANAL CO.*, No. 1082, *ante*.

ix. Petition of Right.

Petition of right generally, see Part II., *ante*.

1124. Whether alternative remedy—To justify refusal of mandamus—Reviewing decisions of Commissioners of Inland Revenue.]—*R. v. INLAND REVENUE COMRS.*, *Re NATHAN*, No. 894, *ante*.

1125. Crown manor.]—*R. v. POWELL*, No. 1159, *post*.

x. Quare Impedit.

See, generally, ECCLESIASTICAL LAW.

1126. Whether mandamus granted—Where quare impedit available.]—*CLARKE v. SARUM* (Bp.) (1737), 2 Stra. 1082; 93 E. R. 1046.

Annotations.—*Refd. R. v. Orton, Trustees* (1849), 14 Q. B. 139. *Mentd. Bowell v. Milbank* (1772), 1 Term Rep. 399, n.

1127. —[If a quare impedit does lie, a mandamus does not (LORD MANSFIELD, C.J.).—*BOWELL v. MILBANK* (1772), 1 Term Rep. 399, n.; 99 E. R. 1160, n.; *sub nom. POWELL v. MILBANK*, *Cowp.* 103, n.; 3 Wils. 355.

Annotations.—*Refd. R. v. Orton Vicarage, Trustees* (1849), 14 L. J. Q. B. 321. *Mentd. Read v. Brookman* (1789), 3 Term Rep. 151; *O'Connor v. Cook* (1802), 6 Ves. 665; *Hilary v. Waller* (1806), 12 Ves. 239; *R. v. Hawkins* (1808), 10 East, 211; *A.-G. v. Farmeter, Re Portsmouth Harbour* (1811), 10 Price, 378; *Bennett v. Neale* (1811), Wight. 324; *Meade v. Morbury* (1816), 2 Price, 338; *A.-G. v. Horner* (No. 2), [1913] 2 Ch. 140.

1128. —[*R. v. CHESTER* (Bp.). No. 895, *ante*.

1129. —[*R. v. STAFFORD* (MARQUIS), No. 1104, *ante*.

1130. —[Upon an application for a mandamus to the chapter of E. to elect G. to be a canon residentiary as a qualification for the office of Dean, & then to elect him to be Dean:—*Held*: if the Crown had any right of patronage to the deanery, a mandamus would not lie, for, if it was a donative, quare impedit would be the proper remedy.—*R. v. EXETER* (CHAPTER) (1840), 12 Ad. & El. 512; 4 Per. & Dav. 252; 9 L. J. Q. B. 308; 4 Jur. 674; 113 E. R. 906.

Annotations.—*Refd. R. v. Orton, Trustees* (1849), 14 Q. B. 139. *Mentd. A.-G. v. Horner* (No. 2), [1913] 2 Ch. 140.

1131. —[The advowson of the vicarage of O. was vested in certain persons upon trust upon every avoidance to present to the ordinary for institution such person as should be nominated by the majority of the parishioners. A vacancy having occurred, there were two candidates, & it was disputed which of them had the majority of votes. The trustees having refused to present, a mandamus was applied for:—*Held*: (1) as the

ceased to operate the line the roads fell out of repair. On an application for mandamus:—*Held*: the city had a right to proceed by mandamus, & was not obliged to resort to indictment of the nuisance. Such course not presenting a remedy as beneficial as proceedings by mandamus.—*HALIFAX CITY v. CRY RY. CO.* (1878), R. E. D. 319.—CAN.

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relation of trustee & *cestui que trust* existed between the presentors & the nominators, the only remedy of the latter for want of presentation was in equity; if, however, the landowners had a legal right, they might assert it by *quare impedit*, but in either case mandamus would not lie to compel them to present; (2) the nominee had no legal right to be presented, which he could himself enforce, & therefore he could not have a mandamus to compel the trustees to present him, but his only remedy, under the circumstances, was in equity.—*R. v. ORTON TRUSTEES* (1849), 14 Q. B. 139; 18 L. J. Q. B. 321; 13 J. P. 551; 117 E. R. 57; *sub nom. R. v. BARRE*, 3 New Mag. Cas. 200; 13 L. T. O. S. 528; *sub nom. Re ORTON VICARAGE*, 13 Jur. 1049.

As to mode of procedure by *quare impedit*, see ECCLESIASTICAL LAW.

xi. Quo Warranto.

Quo warranto generally, see Part VIII., post.

1132. Mandamus to admit to office—Office full.]—A mandamus to admit a recorder was refused, because there was a recorder *de facto*, & the party had another remedy by *quo warranto*.—*R. v. COLCHESTER CORPN.* (1788), 2 Term Rep. 259; 100 E. R. 141.

Annotation :—*Reid. R. v. Oxford Corpn.* (1837), 6 Ad. & El.

1133. Mandamus to elect to public office—On ground that previous election void.]—The office of clerk to a board of guardians, created by order of the Poor Law Comrs. under Poor Law Amendment Act, 1834 (c. 76), is an office for the usurpation of which an information in the nature of a *quo warranto* may be maintained. An application, therefore, for a mandamus to guardians to elect a clerk on the ground that the election which had taken place was void, was refused.—*Re ST. MARTIN'S-IN-THE-FIELDS GUARDIANS* (1851), 17 L. T. O. S. 140; 15 J. P. 371.

xii. Statutory Remedies.

1134. Penalty imposed by statute—Not alternative remedy.]—Mandamus lies against an officer on 11 Geo. 1, c. 18, notwithstanding a penalty be given thereby.

As to the penalty, there is nothing in it; for whenever an Act of Parliament directs something to be done, the ct. will enforce the doing it by mandamus (LORD HARDWICKE, C.J.).—*R. v. EVERET* (1736), *Lee temp. Hard.* 261; 95 E. R. 168.

1135. ———.]—Where a party applies for a mandamus to compel churchwardens to inspect their accounts according to the directions of Poor Relief Act, 1743 (c. 38), he must state some special reason for which he wishes to see the accounts. It is no answer to the application that sect. 14 imposes a penalty upon a churchwarden improperly refusing the inspection.

With respect to sect. 14, I think it right to add that it furnishes no answer to this application; the penalty is not given as a compensation to the party aggrieved, but is imposed as a punishment upon the parish officer offending; & if it can be

called a remedy at all it is cumulative, & does not interfere with the real remedy provided, namely, the inspection of the accounts (BAYLEY, J.).—*R. v. CLEAR* (1825), 4 B. & C. 899; 7 Dow. & Ry. K. B. 393; 107 E. R. 1293; *sub nom. R. v. CLIFERE*, 4 L. J. O. S. K. B. 53.

Annotations :—*Folld. Ex p. Briggs* (1859), 1 E. & E. 881. *Consd. R. v. Daventry* (1859), 33 L. T. O. S. 134. *Reid. R. v. Wiltshire & Berkshire Canal Navigation Co.* (1835), 5 Nev. & M. K. B. 344; *R. v. London & St. Katharine's Docks Co.* (1874), 31 L. T. 588; *R. v. St. George the Martyr, Southwark, Vestry* (1892), 61 L. J. Q. B. 398.

1136. Damages to be assessed by jury—Verdict & judgment final & conclusive—Mandamus to issue another precept refused.]—A railway Act directed that in certain cases the railway co. should issue a precept to the sheriff to summon a jury to assess damages, & that the verdict & judgment thereon should be "final & conclusive." A judgment having been entered up under this Act :—*Held* : a mandamus would not be granted to the co., to issue another precept, though the under-sheriff had excluded from the jury one ground of damages, & the jury had also found a verdict against the evidence.—*R. v. EASTERN COUNTIES RY. CO.* (1843), 3 Ry. & Can. Cas. 466; 2 Dowl. N. S. 945; 12 L. J. Q. B. 271; 1 L. T. O. S. 151; 7 J. P. 434; 7 Jur. 628.

Annotation :—*Mentd. Re Penny & S. R. Ry.* (1857), 26 L. J. Q. B. 225.

1137. Army Act, 1881 (c. 58), s. 70—Commanding Army Council to reassemble court of inquiry.]—*R. v. ARMY COUNCIL, Ex p. RAVENSCROFT*, No. 1011, *ante*.

See, generally, ROYAL FORCES.

1138. Charitable Trusts Act, 1853 (c. 137), s. 28—Compelling Charity Commissioners to determine eligibility of person nominated—As governor of charity.]—A scheme, made under the Endowed School Act, 1869 (c. 56), for the management of a school provided that any question affecting the regularity or the validity of any proceeding under the scheme should be determined conclusively by the Charity Comrs. Upon an application by the school board for a mandamus to compel the Charity Comrs. to decide the question, which had arisen between the school board & the governors, whether a lady could under the scheme be appointed an almoner :—*Held* : the mandamus ought not to issue, on the ground that appets. had alternative convenient & effectual remedies, namely, by proceedings to have the question decided under Charitable Trusts Act, 1853 (c. 137), s. 28, or by action against the governors in the ordinary cts.—*R. v. ENGLAND & WALES CHARITY COMRS.*, [1897] 1 Q. B. 407; 66 L. J. Q. B. 321; 76 L. T. 199; 45 W. R. 336; 13 T. L. R. 150; 41 Sol. Jo. 212, D. C.

1139. Companies Act, 1862 (c. 89), s. 35—To enforce registration of transfer of shares in company.]—*R. v. LAMBOURN VALLEY RY. CO.*, No. 1044, *ante*.

See, generally, COMPANIES.

1140. Corrupt Practices (Municipal Elections) Act, 1872 (c. 60) — By petition.]—J., a town councillor of the borough of W., whose term of office would expire by lapse of time on Nov. 1, 1876, on June 29 in that year filed a petition for liquidation of his affairs by arrangement. On July 29, a statutory majority of his creditors by special resolution declared that his affairs should

PART VI. SECT. 1, SUB-SECT. 3.— F. (b) xii.

o. Assessment Act C. S. c. 55—To render account.]—The treasurer of a town applied for a mandamus to the

collector, commanding him to give an account in writing, for the period during which he had held office, of the taxes remaining due on his rolls, & to make oath that the sums were unpaid :—*Held* : the writ should be refused,

there being other remedies provided under above Act.—*Re QUIN* (1864), 23 U. C. R. 308.—CAN.

p. Dominion Railway Act, 1903—Compelling railway company to provide

be liquidated by arrangement, & his discharge was granted on Sept. 29. No declaration was made by the council under Municipal Corpn. Act, 1835 (c. 76), s. 52, that the office held by him was void under that sect., but he did not, in fact, act as town councillor after the institution of these proceedings with his creditors until after Nov. 1. On Nov. 1, the offices of three other councillors besides that of J. would become vacant by lapse of time, & the mayor having declared no one to be duly nominated for these four vacancies the returning officer, under Municipal Corpn. Act, 1859 (c. 35), s. 8 (4), declared that the retiring councillors, among whom he included J., had been re-elected. Upon a rule for a *mandamus* calling upon the mayor, etc., of W. to declare the office of councillor lately held by J. void, as required by Municipal Corpn. Act, 1835 (c. 76), s. 52, & to proceed to the election of another person to supply such vacancy:—*Held*: (1) on the first part of the rule, the office "lately held by J." was in fact filled up, & the time had, therefore, passed when it could be declared void; (2) the *mandamus* would not lie for a fresh election, for inasmuch as the council had not declared J.'s office void under sect. 52, the office was still full on Nov. 1; & J. was, therefore, a retiring councillor within the meaning of Municipal Corpn. Act, 1859 (c. 35), s. 8 (4), & under that sect. was properly declared to be re-elected to his office; (3) if there were any remedy, it would have been under Corrupt Practices (Municipal Elections) Act, 1872 (c. 60), s. 12, by petition & not by *mandamus*.

(4) *Qu.*: whether the *mandamus* should not have been addressed to the town council, instead of to the mayor, etc.—*R.* (ON THE PROSECUTION OF OWEN) *v.* WELCHPOOL CORPN. (1876), 35 L. T. 594; 41 J. P. 229.

Annotations:—As to (2) *Consd.* *R. v. Beer*, [1903] 2 K. B. 693. As to (3) *Consd.* *Futcher v. Saunders* (1885), 49 J. P. 421.

1141. 18 & 19 Vict., c. 63 — Reinstatement of member — Action in county court.—The trustees of a friendly society expelled a member. On an application for a *mandamus* directing the trustees to reinstate the member:—*Held*: the question was one for the county ct., under sect. 41 of the above Act.—*Ex p. WOOLDRIDGE* (1862), 1 B. & S. 844; 31 L. J. Q. B. 122; 5 L. T. 609; 26 J. P. 469; 8 Jur. N. S. 696; 10 W. R. 250; 121 E. R. 927.

See, generally, FRIENDLY SOCIETIES.

1142. Local Government Act, 1858 (c. 98), s. 73 — By action.—T., the lessee of a mill on the river S., enjoyed, as the representative of an ordinary riparian proprietor, the benefit of the waters of the S. for his mill. The D. board, in order to flush sewers made by them, took away from the S. certain water, which was thus lost to T.'s mill, & his mill occasionally stopped thereby. The making of the sewers also diverted from the S. above T.'s mill water which would otherwise have flowed into the S., & so come to T.'s mill. In the absence of T.'s consent in writing:—*Held*: assuming that T. had sustained injuries by the acts of the board, he was, within the meaning of Local Govt. Act, 1858 (c. 98), s. 73, entitled by law to prevent or be relieved against such acts, which were unauthorised, & therefore his remedy was by action, & not by *mandamus* to enforce compensation under Public Health Act, 1848

(c. 63), s. 144.—*R. v. DARLINGTON LOCAL BOARD OF HEALTH* (1865), 6 B. & S. 562; 6 New Rep. 178; 35 L. J. Q. B. 45; 29 J. P. 419; 13 W. R. 789; 122 E. R. 1303, Ex. Ch.

1143. London County Council (General Powers) Act, 1910 (c. cxxix), s. 22—Compelling London County Council to hear & determine application for licence—Remedy by way of appeal.—As sect. 22 (5) of the above Act provides a remedy by appeal in the case of a person aggrieved by the refusal of the London County Council to grant a licence for an employment agency, the ct. will discharge a rule which has been obtained for a *mandamus* requiring the council to hear an application for an employment agency licence.—*R. v. LONDON COUNTY COUNCIL, Ex p. THORNTON* (1911), 27 T. L. R. 422, D. C.

1144. London Government Act, 1899 (c. 14) — Whether by distress—Refusal to levy rates.—*R. v. POPLAR BOROUGH COUNCIL* (No. 1), No. 1066, *ante*.

1145. Metropolitan Paving Act, 1817 (c. xxix), s. 38—By action—Enforcement of rates.—A *mandamus* will not lie to justices to enforce by distress warrants paving rates laid within the operation of the above Act, sect. 38 of the Act giving a remedy by action, even though the rates are collected under prior local Acts applicable to particular districts, by which the remedy by action is confined to cases where no sufficient distress can be made.—*R. v. MIDDLESEX JJ.* (1835), 1 Har. & W. 462; 5 Nev. & M. K. B. 126; 3 Nev. & M. M. C. 202.

1146. Municipal Corporation (Water Rate) Act, 1837 (c. 81), s. 1—By distress warrant.—A *mandamus* will not be granted to enforce, from the overseers of a township in a municipal borough, the quota of a pound rate towards the borough fund payable by the township, a remedy by distress warrant, under the hand & seal of the mayor, being given by the above Act.—*R. v. HUNSLY OVERSEERS* (1859), 1 E. & E. 775; 28 L. J. M. C. 180; 33 L. T. O. S. 104; 5 Jur. N. S. 913; 7 W. R. 411; 120 E. R. 1101.

1147. Poor Rate Act, 1839 (c. 84), s. 1—Enforcement of precept of guardians.—The B. borough council, having refused to pay on a precept of guardians a certain sum of money to enable the guardians to carry out their poor law duties in the parish of B., the guardians obtained a rule *nisi* for a *mandamus* to the B. borough council to pay such sum, & if necessary, to make & levy a rate for such purpose.—*Held*: as there was an effective & convenient remedy for the guardians to enforce the precept under the above Act, the rule would be discharged.—*R. v. BERMONDSEY BOROUGH COUNCIL, Ex p. BERMONDSEY GUARDIANS* (1908), 99 L. T. 14; 72 J. P. 330; 6 L. G. R. 852, D. C.
Annotation:—*Consd.* *R. v. Poplar B. C.* (No. 1), [1922] 1 K. B. 72.

See, further, DISTRESS; RATES & RATING.

1148. Port of London Act, 1908 (c. 68), s. 7 (2)—Appeal to Board of Trade—From refusal of licence to construct wharf.—*R. v. PORT OF LONDON AUTHORITY, Ex p. KYNOCH, LTD.*, No. 1003, *ante*.

1149. Public Health Act, 1875 (c. 55), s. 299—Maintenance of existing sewers—Complaint to Local Government Board.—The proper procedure to compel a local authority to carry out its duties under s. 15 of the above Act, as to the maintenance of existing sewers, is by complaint to the Local Govt. Board, under s. 299 of the above Act, &

accommodation—By *Railway Commission*.—Where appct. sought a *mandamus* to compel the Grand Trunk Ry. Co., pursuant to 16 Vict. c. 27, s. 3, to run a train containing third-class carriages, & to permit appct. to travel

therein on payment of a fare not exceeding one penny a mile:—*Held*: appct. had an adequate remedy under above Act.—*Re ROBERTSON & GRAND TRUNK RY. CO.* (1907), 9 O. W. R. 629; 14 O. L. R. 497.—*CAN.*

q. Manhood Suffrage Act, 1887—To try complaint as to omissions from voters' lists—By appeal to county judge.—*Re MARTIN & GRAVENHURST TOWN COURT OF REVISION* (1889), 18 O. R. 243.—*CAN.*

Sect. 1.—The prerogative writ: Sub-sect. 3, F. (b) *iii.*; sub-sect. 4, A.]

not, as a general rule, by prerogative writ of mandamus.—*R. v. HASTINGS CORPN.*, [1897] 1 Q. B. 46; 66 L. J. Q. B. 80; 75 L. T. 377; 60 J. P. 759; 45 W. R. 109; 13 T. L. R. 25; 41 Sol. Jo. 50, D. C.

Annotations.—*Mentd.* *Seal v. Merthyr Tydfil U. D. C.* (1897), 77 L. T. 303; *Haedloke v. Friern Barnet U. C.*, [1904] 2 K. B. 807; *Wood Green U. C. v. Joseph* (1905), 74 L. J. K. B. 954.

1150. ————*]*—The duty of a local authority, under sect. 15 of the above Act, to make such sewers as may be necessary for effectually draining their district for the purposes of that Act, cannot be enforced by an action for mandamus brought by a private person, the only remedy for neglect of the duty being that given by sect. 299 of the Act, a complaint to the Local Govt. Board.—*PASMORE v. OSWALDTWISTLE URBAN COUNCIL*, [1898] A. C. 387; 67 L. J. Q. B. 635; 78 L. T. 569; 62 J. P. 628; 14 T. L. R. 368, H. L.

Annotations.—*Consd.* *R. v. Stepney Corpn.*, [1902] 1 K. B. 317; *R. v. Poplar B. C.* (No. 1), [1922] 1 K. B. 72; *Mentd.* *Devonport Corpn. v. Tozer* [1902] 2 Ch. 182; *Haedloke v. Friern Barnet U. C.*, [1904] 2 K. B. 807; *Harrington v. Derby Corpn.*, [1905] 1 Ch. 205; *Brook v. Meltham U. C.*, [1908] 2 K. B. 780; *Waltham Holy Cross U. D. C. v. Lea Conservancy Board* (1910), 103 L. T. 192; *Hulme v. Ferranti*, [1918] 2 K. B. 426; *Waghorn v. Collison* (1922), 127 L. T. 8.

See, generally, SEWERS & DRAINS.

1151. Solicitors Act, 1888 (c. 65), ss. 12, 13, 19—Compelling Incorporated Law Society to hear complaint against solicitor—Direct application to court.—The committee of the Incorporated Law Society, having considered the affidavit of complainant in a case before them, refused, under sect. 13 of the above Act, to proceed or require the attendance of the solr. on the ground that no *prima facie* case was made out. A rule for a mandamus having been obtained:—*Held*: the rule ought to be discharged on the ground that there was another more convenient remedy open to complainant, namely, a direct application to the ct. itself, under sect. 13 of the above Act, therefore the remedy by mandamus ought not to be granted.—*R. v. INCORPORATED LAW SOCIETY*, [1895] 2 Q. B. 456; 64 L. J. Q. B. 797; 73 L. T. 187; 43 W. R. 687; 11 T. L. R. 557; 39 Sol. Jo. 592; 15 R. 597, D. C.; *subsequent proceedings*, [1896] 1 Q. B. 327, C. A.

See, generally, SOLICITORS.

1152. Stamp Act, 1870 (c. 97), ss. 18, 19, 20—Compelling Registrar of Joint Stock Companies to file contract—Under Companies Act, 1867 (c. 131), s. 25.—An application was made for a mandamus to compel the Registrar of Joint Stock Cos. to file under Cos. Act, 1867 (c. 131), s. 25, a contract which he had refused to file on the ground that it was insufficiently stamped:—*Held*: the proper mode of questioning the legality of the registrar's refusal was by obtaining the opinion of the Comrs. of Inland Revenue & appealing from their decision under Stamp Act, 1870 (c. 97), ss. 18, 19 & 20, & therefore, as there was another appropriate remedy, a mandamus must be refused.

A writ of mandamus will lie against the Registrar of Joint Stock Cos., though an official of the Board of Trade, which is a committee of the Privy Council, if he refuse to perform a mere ministerial

act which he is under a statutory obligation to perform (WILLS, J.).—*R. v. JOINT STOCK COS.' REGISTRAR* (1888), 21 Q. B. D. 131; 57 L. J. Q. B. 433; 59 L. T. 67; 52 J. P. 710; 36 W. R. 695; 4 T. L. R. 513, D. C.

Annotations.—*Refd.* *R. v. Lambourn Valley Ry.* (1888), 22 Q. B. D. 463; *R. v. Incorporated Law Society*, [1895] 2 Q. B. 456; *R. v. Davies*, [1911] 2 K. B. 669; *R. v. Christ's Hospital, Ex p. Dunn*, [1917] 1 K. B. 19.

See, generally, COMPANIES; REVENUE.

1153. Tramways Act, 1870 (c. 78), s. 33—Determination of disputes by referees—Appointed by Board of Trade.—By a local Tramway Act, passed after & incorporating the above Act, the space between the rails & for a distance of eighteen inches beyond each external rail was to be paved by the co. to the satisfaction of the local authority for the district with wood or other paving to be approved of by the local authority. On an application by the co. the local authority declined to approve of a particular paving, & the co. thereupon laid it down without such approval. On an application by the local authority for a mandamus to the co. to take up the paving so laid down:—*Held*: the powers given to the local authority were subject to the provisions of the above Act, & a difference having arisen within sect. 33 of that Act which ought to be determined by a referee appointed by the Board of Trade, the mandamus ought not to be granted.—*R. v. CROYDON & NORWOOD TRAMWAYS CO.* (1886), 18 Q. B. D. 39; 56 L. J. Q. B. 125; 56 L. T. 78; 51 J. P. 420; 35 W. R. 299; 3 T. L. R. 32, C. A.

Annotations.—*Mentd.* *Bristol Trams & Carriage Co. v. Bristol Corpn.* (1890), 25 Q. B. D. 427; *Norwich Corpn. v. Norwich Electric Tram. Co.*, [1906] 2 K. B. 119; *R. v. Garrett & Hammersmith B. C., Ex p. London United Tramways* (1909), 100 L. T. 533.

See, further, TRAMWAYS & LIGHT RAILWAYS.

1154. Vaccination Act, 1871 (c. 98), s. 5—Compelling appointment of vaccination officer by guardians—Powers of Local Government Board to appoint.—*R. v. LEICESTER UNION*, No. 901, *ante*.
See, generally, PUBLIC HEALTH & LOCAL ADMINISTRATION.

1155. Valuation (Metropolis) Act, 1869 (c. 67), s. 32—Compelling assessment committee to insert rateable value of hereditaments—Remedy by way of appeal.—*R. v. LONDON CITY ASSESSMENT COMMITTEE*, No. 957, *ante*.

See, generally, METROPOLIS; RATES & RATING.

1156. No alternative remedy given by statute.—Defts. were the Drainage Comrs. of a certain district under Acts of 1796, 1849, & 1863, & pltf. was the owner of a farm in that district. By these Acts certain duties & obligations with regard to the drainage of the district were imposed on defts. Pltf. in 1907, complained to defts. that they were failing to fulfil their duties under the Acts, & that his farm had suffered damage from floods. On May 23, 1917, he obtained from the Div. Ct. a rule *nisi* for a mandamus ordering defts. to drain effectually the district including pltf.'s farm. On the argument upon the rule *nisi* the ct. decided to obtain a report from an independent engineer, & his report was made in Mar. 1918. On June 24, 1918, the ct. made the rule absolute. On Oct. 26, 1918, defts. filed an answer to the writ alleging that they had carried out the order of the Ct. to the best of their ability, & that they had never been in default. Pltf. replied or traversed on Dec. 24, 1918, claiming damages. Defts. by a

r. Municipal Act, 1889—To approve plans—Remedy under Specific Relief Act, 1877.—*BHOLARAM CROWDERY v. CALCUTTA CORPN.* (1909), 1 L. L. R. 36 Calc. 671.—*IND.*

s. Poor Law Relief (Ireland) Act,

1837, c. 56—*Refusal of guardians to act.*—Where guardians who have acted refuse to act any longer, the ct. will not allow a mandamus to issue directing them to obey an order of the comrs. to meet on a certain

day, another specific remedy having been provided by above Act.—*R. v. LIMERICK UNION GUARDIANS OF THE POOR* (1844), 7 I. L. R. 402.—*IR.*

rejoinder delivered on July 5, 1919, pleaded Public Authorities Protection Act, 1893 (c. 61):—*Held*: (1) *defts.* were entitled to contend that the writ of mandamus should not have been issued by the Div. Ct.; (2) *pltf.* had no alternative remedy whereby he was deprived of the right to a prerogative writ of mandamus; (3) the Public Authorities Protection Act, 1893 (c. 61), was applicable to the claim for damages; (4) on the facts *defts.* were in default, & a peremptory writ of mandamus ought to issue; (5) *pltf.* had proved breaches of duty by *defts.* for many years & a continuous damage resulting from those breaches, in respect of which he was entitled to damages.—*R. v. MARSHLAND SMEETH & FEN DISTRICT COMRS.*, [1920] 1 K. B. 155; 89 L. J. K. B. 116; 121 L. T. 599; 88 J. P. 253; 17 L. G. R. 679.

SUB-SECT. 4.—TO WHOM THE WRIT MAY OR MAY NOT ISSUE.

A. The Crown and its Servants.

1157. General rule.—Not against Crown or Crown servants as such.—The *ct.* will not grant a mandamus to compel the *Comrs.* of Customs to deliver up goods placed rightfully in their custody to secure the duty, on a suggestion that the full amount of the duty has been since tendered or paid.

The goods are in the hands of the officers of the Crown. A mandamus to them in this case would be like a mandamus to the Crown, which we cannot grant (*LITLEDALE, J.*).—*R. v. CUSTOMS COMRS.* (1836), 5 Ad. & El. 380; 2 Har. & W. 247; 6 Nev. & M. K. B. 828; 1 Nev. & P. K. B. 536; 6 L. J. M. C. 65; 111 E. R. 1209.

Annotation:—*Reid. R. v. Excise Comrs* (1845), 9 Jur. 618.

1158. ———.]—A mandamus will not lie to the Lords of the Treasury where they act merely as the servants of the Crown, to enforce the satisfaction of a claim on the Crown.

Against the servants of the Crown, as such, & merely to enforce the satisfaction of claims upon the Crown it is an established rule that a mandamus will not lie (*COLERIDGE, J.*).—*Re DE BODE (BARON)* (1838), 6 Dowl. 776; *sub nom. R. v. TREASURY LORDS, Ex p. DE BODE (BARON)*, 1 Will. Woll. & H. 332.

1159. ——— Not enforceable by attachment against Crown.]—(1) A mandamus does not lie to obtain admission to a Crown manor, the remedy being by petition of right or other suitable proceeding.

That there can be no mandamus to the Sovereign there can be no doubt, both because there would be an incongruity in the Queen commanding herself to do an act, & also because the disobedience to a writ of mandamus is to be enforced by attachment (*LORD DENMAN, C.J.*).

(2) After a return to a writ of mandamus, which is set down upon the Crown paper to be argued upon a *concilium*, it is competent for *deft.* to object to the writ for any defect in substance.—*R. v. POWELL* (1841), 1 Q. B. 352; 4 Per. & Dav. 719; 113 E. R. 1166; *sub nom. R. v. RICHMOND*

(*STEWART OF MANOR*), Arn. & H. 290; 10 L. J. Q. B. 148; 5 J. P. 465; 5 Jur. 605.

Annotations:—*As to* (1) *Reid. R. v. Woods Forests Comrs.*, *Re Budge* (1848), 17 L. J. Q. B. 341; *R. v. I. R. Comrs.*, *Re Nathan*, (1884), 12 Q. B. D. 461. *As to* (2) *Reid. London Corp. v. R.* (1848), 13 Q. B. 30. *Generally, Mentd. Chabot v. Morpeth* (1850), 19 L. J. Q. B. 377; *R. v. Lambourn Valley Ry.* (1888), 22 Q. B. D. 463.

1160. ———.]—In the half-year ending Dec. 31, 1870, certain prosecutions took place at the assizes & quarter sessions of the county of L., & the costs were taxed by the proper officers under the orders of the respective *cls.*, & the treasurer of the county paid the bills, & returned the bills with the usual vouchers, to the Treasury. The Lords of the Treasury had appointed certain officers called the Examiners of Criminal Law Accounts, & these officers disallowed or reduced in amount fifty-one of the items in the bills returned. A rule *nisi* was obtained for a mandamus to the Lords of the Treasury, commanding them to issue a Treasury minute authorising the paymaster of civil contingencies to pay to the treasurer of the county of L. the sums disallowed:—*Held*: a mandamus would not lie, inasmuch as the Lords of the Treasury received the money, which was granted to Her Majesty, as servants of the Crown, & no duty was imposed upon them as between them & the persons to whom the money was payable.

It does not follow that because there is no remedy for the county or borough who have paid all the costs as originally taxed, except that of applying by petition to the Crown, or by petition to Parliament, it is not because there is no other remedy but that which may be a fruitless & abortive one, that this *ct.* has jurisdiction to issue a writ of mandamus. I take it, with reference to that jurisdiction, we must start with this unquestionable principle, that when a duty has to be performed, if I may use that expression, by the Crown, this *ct.* cannot claim even in appearance to have any power to command the Crown, the thing is out of the question. Over the Sovereign we can have no power. In like manner where the parties are acting as servants of the Crown, & are amenable to the Crown, whose servants they are, they are not amenable to us in the exercise of our prerogative jurisdiction (*COCKBURN, C.J.*).—*R. v. TREASURY LORDS COMRS.* (1872), L. R. 7 Q. B. 387; 41 L. J. Q. B. 178; 26 L. T. 61; 36 J. P. 661; 20 W. R. 336; 12 Cox, C. C. 277.

Annotations:—*Consd. Armytage v. Wilkinson* (1878), 3 App. Cas. 355; *R. v. Income Tax Comrs.*, *Ex p. Cape Copper Mining Co.* (1888), 57 L. J. Q. B. 513; *R. v. Secretary of State for War*, [1891] 2 Q. B. 326; *R. v. Army Council, Ex p. Ravenscroft*, [1917] 2 K. B. 504. *Distd. R. v. Income Tax Special Purposes Comrs.*, *Ex p. Barnardo's Homes National Incorporated Assocn.*, [1920] 1 K. B. 26. *Reid. R. v. I. R. Comrs.*, *Re Nathan* (1884), 12 Q. B. D. 461; *R. v. Joint Stock Cos. Registrar* (1888), 21 Q. B. D. 131; *Hollinshead v. Hazleton*, [1916] 1 A. C. 428; *R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595. *Mentd. Wilcock v. Terrell* (1878), 3 Ex. D. 323; *Dixon v. Farrer* (1886), 17 Q. B. D. 658; *R. v. Incorporated Law Soc.* (1895), 11 T. L. R. 557.

1161. ———.]—*R. v. INCOME TAX SPECIAL PURPOSES COMRS.*, *Ex p. DR. BARNARDO'S HOMES NATIONAL INCORPORATED ASSOCN.*, No. 1810, *post*.

1162. Secretary of State—Acting under legal warrant—No legal duty by statute or common

PART VI. SECT. 1, SUB-SECT. 4.—A.

1157 l. General rule.—*Mandamus* will never in any circumstances be granted where direct relief is sought against the Crown.—*McQUEEN v. R.* (1887), 16 S. C. R. 1.—CAN.

1157 ll. ——— *Not against Crown or Crown servants as such*—*Except when appointed to perform statutory duty.*—Although a minister of the Crown is not

subject to *mandamus* when acting as agent of the Crown, still, where under any Act he is appointed to do a particular act a *mandamus* will lie to compel him to do it.—*Re SOOKA NAND VERMA* (1905), 7 W. A. L. R. 225.—AUS.

1157 ll. ———.]—*Mandamus* may issue against Crown servant where what is sought is the performance

of some act which he ought to do in the course of his duty; but it is a different thing where a *mandamus* is sought to compel payment of a debt alleged to be due by the Crown.—*DURBAN CORPN. v. SOUTH AFRICAN RAILWAYS & HARBOURS* (1917), 38 N. L. R. 199.—S. AF.

t. Collector of customs—Acting as Crown servant.—A *mandamus* against

Sec. 1.—The prerogative writ: Sub-sect. 4, A.]

law.]—A mandamus will not lie against the Secretary of State for War to compel him to carry out the terms of a royal warrant regulating the pay & retiring allowances of the officers & soldiers of the army, inasmuch as no legal duty towards such officers & soldiers is imposed upon the Secretary of State either by statute or at common law, & his position is merely that of agent to the Crown, & he is only liable to answer to the Crown.—*R. v. SECRETARY OF STATE FOR WAR*, [1891] 2 Q. B. 326; 60 L. J. Q. B. 457; 64 L. T. 764; 56 J. P. 105; 40 W. R. 5; 7 T. L. R. 579, C. A.

Annotations.—*Consd. R. v. Income Tax Special Purposes Comrs., Ex p. Barnardo's Homes National Incorporated Assn.*, [1920] 1 K. B. 26. *Mentd. Dunn v. Macdonald* (1897), 76 L. T. 444.

1163. Lords of the Admiralty—To carry out contract.]—In a patent for an invention, it was stipulated that the patentee should supply for his Majesty's service so much of the invented article as should be required, at such reasonable prices & terms as should be settled for that purpose by the Admty. The patentee allowed the article to be made at the royal dockyards, & at the request of the Navy Board gave instructions for the guidance of the smiths there, without stipulating for any recompense for the use of the patent:—*Held*: a mandamus did not lie to the Admty. to fix a price to be paid to the patentee.

The claim, if valid, must be founded on a contract. But we cannot grant a mandamus to a public board ordering them to carry a contract into effect (*PATESON, J.*).—*Ex p. PERING* (1836), 4 Ad. & El. 949; 111 E. R. 1040; *sub nom. Re MANDAMUS, APPLICATION FOR, TO LORDS OF ADMIRALTY, Ex p. PERING*, 6 Nev. & M. K. B. 472; *subsequent proceedings, sub nom. Re PERING* (1837), 2 M. & W. 873.

1164. Lords of the Treasury—Holding money under Act of Parliament—For benefit of individual.]—The Lords of the Treasury agreed to submit a vote to Parliament for granting a retired allowance to a public officer, on certificate of ill health, according to 3 Geo. 4, c. 113. The vote passed, but the pension was not specifically mentioned in the Appropriation Act, which, however, directed a gross sum to be applied in discharge of retired allowances. The Lords of the Treasury, on application by the party for payment, informed him that he might receive it from a Treasury officer whom they named. The officer declined paying, inasmuch as he had no authority from the Lords of the Treasury, & they, being again applied to, refused to give such authority except on condition that the party would forego certain legal proceedings, which he refused to do:—*Held*: a mandamus lay to the Lords of the Treasury to order payment, inasmuch as the claimant had no other remedy, & as the writ was demanded, not against the King, but against officers into whose hands money had been paid under an Act of Parliament for the use of an individual.—*R. v. TREASURY LORDS COMRS.* (1835), 4 Ad. & El. 286; 1 Har. & W. 533; 5 Nev. & M. K. B. 589; 5 L. J. K. B. 20; 111 E. R. 794.

Annotations.—*Distd. R. v. Treasury Lords Comrs., Re Hand*

a collector of customs refused as the collector was acting as a servant of the Crown.—*Re CAKEY & WESTERN CANADA LIQUOR CO., LTD.* (1920), 3 W. W. R. 329.—**CAN.**

a. *Collector of Inland Revenue—To issue licence.]—Mandamus will not lie to compel the collector of Inland Revenue to issue an Excise licence for*

the sale of spirits, in pursuance of a certificate granted by magistrates at quarter sessions, where such certificate was granted without jurisdiction even though the certificate is, on its face, a valid one.—*R. (M'CLINCHY) v. GREER*, [1904] 2 I. R. 494; 37 I. L. T. 156.—**IR.**

b. *Colonial Treasurer—To pay over*

(1836), 4 Ad. & El. 984. *Expid. Re De Bode* (1838), 6 Dowl. 776. *Consd. R. v. Treasury Lords Comrs., Re Queen Dowager's Annuity* (1851), 15 Jur. 767. *Distd. Ex p. Napier* (1852), 18 Q. B. 692; *Re Treasury Lords Comrs., Ex p. Walmsley* (1861), 1 B. & S. 81. *Distd. R. v. Treasury Lords Comrs.* (1872), L. R. 7 Q. B. 387. I think that is a case of very doubtful authority (*COCKBURN, C.J.*); *R. v. I. R. Comrs.* (1884), 53 L. J. Q. B. 229. I cannot agree that it was a proper decision on the grounds put by the ct. (*BRETT, M.R.*). *Reid. R. v. Excise Comrs.* (1845), 9 Jur. 618; *R. v. Woods & Forests Comrs.* (1850), 15 Q. B. 761; *Williams v. Admiralty Lords Comrs.* (1851), 17 L. T. O. S. 200.

1165. — Acting merely as servants of Crown.]

—*Re DE BODE (BARON)*, No. 1158, *ante*.

1166. — —.]—R. v. TREASURY LORDS COMRS., No. 1160, *ante*.

1167. — To enforce payment of pension.]—Under 50 Geo. 3, c. 117, & 3 Geo. 4, c. 113, the Lords of the Treasury were not authorised to grant retired allowances for life. A grant of such allowance made by them in general terms was subject to the discretion of Parliament in voting the supplies from year to year, & was revocable by the Lords of Treasury. The Lords, after granting such allowance on the abolition of an office, had revoked the grant, but the allowance had been erroneously inserted in the estimates of the year, voted by Parliament, & included in an Appropriation Act:—*Held*: the ct. would refuse to inquire into the propriety of the revocation, & would not grant a mandamus to the Lords for payment of the arrears, it being proved that the sum so voted had never come to their hands, & had been newly appropriated by a later Act of Parliament.—*R. v. TREASURY LORDS COMRS., Re IIAND* (1836), 4 Ad. & El. 984; 2 Har. & W. 67; 6 Nev. & M. K. B. 508; 111 E. R. 1053.

Annotations.—*Consd. Re De Bode* (1838), 6 Dowl. 776. *Reid. R. v. Treasury Lords Comrs., Re Queen Dowager's Annuity* (1851), 15 Jur. 767; *R. v. Treasury Lords, Ex p. Lancashire JJ.* (1872), 26 L. T. 64.

1168. — Arrears of annuity—Charged upon Consolidated Fund.]—By 1 & 2 Will. 4, c. 11, William IV. was empowered, by indenture, to grant to the Queen an annuity of £100,000 to commence from the death of the King & to be paid out of the Consolidated Fund. By indenture, dated Apr. 6, 1832, in pursuance of this Act, the King granted to trustees in trust for Her Majesty the annuity of £100,000, & directed that it should be paid at the receipt of the Exchequer, & that the auditor of the Exchequer should issue debentures for paying the same, & that the Commissioners of the Treasury should cause the sum of £100,000 to be paid out of the Consolidated Fund. By the 4 & 5 Will. 4, c. 15, the office of auditor of the Exchequer was abolished, & in all cases of grants by Parliament charged on the Consolidated Fund, instead of debentures being issued by the auditor, the Comrs. of the Treasury are required to issue warrants for the payment of the money granted. The annuity to the Queen was, by the Act of Parliament & the indenture granting it, "to commence & take effect immediately after the decease of His Majesty, & to continue from thenceforth for & during the natural life of Her Majesty, & to be paid & payable at the four most usual days of payment, viz. Mar. 31, June 30, Sept. 30, & Dec. 31, by even & equal portions, the first payment to be made on such of the said days as should first & next happen after the decease of His

money voted by Parliament.]—*Mandamus will not lie to compel the colonial treasurer to pay over moneys voted by parliament to a public body until it is shown by plff. that the governor has issued his warrant placing moneys at the disposal of the colonial treasurer which could be applied for the purpose & that the warrant, if*

Majesty." William IV. died on June 25, 1837, & upon the 30th of the same month a full quarter's annuity was paid to the Queen Dowager. The Queen Dowager died on Dec. 2, 1849:—*Held*: (1) a mandamus would lie to the Lords of the Treasury to issue a warrant for the payment of the money granted; (2) the fact of a whole quarter's annuity having been paid on June 30, 1837, would not have prevented a mandamus being issued to compel payment of a proportional part of the last quarter, up to the day of her death, if the annuity had been apportionable.

(3) The right, if it exists, is a legal right, & there is no efficient remedy without the aid of this prerogative writ (LORD CAMPBELL, C.J.).

Qu.: whether the A.-G. showing cause against the above rule for a mandamus had a right of reply.—*R. v. TREASURY LORDS COMRS., Ex p. BROUGHAM & VAUX (LORD)* (1851), 16 Q. B. 357; 20 L. J. Q. B. 305; 16 L. T. O. S. 484; 15 Jur. 767; 117 E. R. 916.

Annotations:—*As to* (1) *Ex p. Napier* (1852), 18 Q. B. 692. *Refd. R. v. Treasury Lords Comrs.* (1872), L. R. 7 Q. B. 387. *As to* (3) *Appl. R. v. Income Tax Special Purposes Comrs.* (1888), 21 Q. B. D. 313. *Consd. R. v. Incorporated Law Soc.*, [1895] 2 Q. B. 456. *Refd. R. v. Joint Stock Cos. Registrar* (1888), 21 Q. B. D. 131; *R. v. Lambourn Valley Ry.* (1888), 22 Q. B. D. 463. *Generally, Mentd. R. v. Ambergate, etc., Ry.* (1852), 17 Q. B. 957.

1169. — *To pay for goods supplied to county courts.*—*A.*, on the order of a county ct. registrar, supplied goods to the county ct. in respect of which a balance remained unpaid:—*Held*: this was not a fit subject for a mandamus to the Comrs. of Her Majesty's Treasury to pay the amount out of the money voted by Parliament for the expenses of county cts.—*Re TREASURY LORDS COMRS., Ex p. WALMSLEY* (1861), 1 B. & S. 81; 4 L. T. 242; 26 J. P. 22; 7 Jur. N. S. 1010; 121 E. R. 644; *sub nom. Ex p. WARMSBY*, 9 W. R. 599.

1170. — *To compel audit.*—*At instance of Crown servant.*—*Exchequer & Audit Departments Act, 1866* (c. 39), & those Acts which it amends or alters, give no right to a receiver of public money to compel the Comrs. of the Treasury to direct the Comptroller & Auditor General to examine & audit his accounts.—*Ex p. EDMUNDS* (1871), 25 L. T. 705; 36 J. P. 581; 20 W. R. 205.

1171. — *To apportion pension.*—The chief constable of a county in England resigned that appointment after fifteen years' service. He had previously served for a number of years as an officer in the Royal Irish Constabulary:—*Held*: (1) service in that force was service in a "police force" within the definition of that expression in Police Act, 1890 (c. 45), s. 33, & the period of such service must be reckoned for the purpose of his pension; (2) a mandamus would lie to the Comrs. of the Treasury commanding them to determine, under sect. 14, the proportions in which such pension should be payable from money provided by Parliament & from the police pension fund.—*R. v. TREASURY LORDS COMRS.*, [1909] 2 K. B. 183; 78 L. J. K. B. 680; 100 L. T. 896; 73 J. P. 299; 25 T. L. R. 450; 7 L. G. R. 746, D. C.

Annotation:—*As to* (2) *Refd. R. v. Speyer, R. v. Cassel* (1915), 85 L. J. K. B. 630.

1172. — *To rehear claim for compensation.*—*Municipal Corporations Act, 1835* (c. 76).—A town

clerk, who was in office at the passing of the above Act, but who had been re-appointed afterwards, & subsequently dismissed by the council, applied for compensation which the council refused. He then appealed to the Lords of the Treasury by memorial, & prayed to be heard. The council sent in a memorial in answer, & the town clerk another in reply. The council, in their memorial, alleged that they had dismissed him for conduct which warranted removal. This the town clerk denied. The Lords of the Treasury, without hearing the parties further than by taking the memorials into consideration, awarded that the town clerk was entitled to no compensation. On application for a mandamus to the Lords, commanding them to hear the appeal:—*Held*: it could not be granted, for if the Lords had jurisdiction, which they apparently had not, they had already heard & decided, although the dismissal did not appear to be warranted by the town clerk's conduct.—*R. v. TREASURY LORDS, Re TIBBITTS* (1839), 10 Ad. & El. 374; 2 Per. & Dav. 498; 3 J. P. 83, 660; 113 E. R. 143.

Annotations:—*Mentd. R. v. Warwick Corp., Re Tibbitts* (1840), 3 Per. & Dav. 429; *R. v. Hayward* (1862), 2 B. & S. 585.

1173. *Board of Trade official.*—*Registrar of Joint Stock Companies.*—*Ministerial act.*—*R. v. JOINT STOCK COS. REGISTRAR*, No. 1152, *ante*.

1174. *Commissioners of Customs.*—*R. v. CUSTOMS COMRS.*, No. 1157, *ante*.

1175. — *Qu.*: whether a mandamus can be issued to the Board of Customs.—*R. v. LANDSAY & BOARD OF CUSTOMS* (1888), 4 T. L. R. 464, D. C.

1176. *Commissioners of Woods & Forests.*—*Lands held of the Crown.*—The ct. will not grant a mandamus commanding the Comrs. of Woods & Forests to pay a poor rate in respect of lands held by them under the Crown.—*Ex p. REEVE* (1837), 5 Dowl. 608.

1177. — *Acting in public capacity.*—The Comrs. of Woods & Forests gave notices, under 9 & 10 Vict. c. 38, s. 15, that they intended to take lands, specified in the sched. to that Act, for the purpose of forming a park. One of the landowners obtained a mandamus to the Comrs. to cause a jury to be summoned, under sect. 23, to assess compensation for his land. On return, stating the proceedings at length, & showing that defts., in pursuance of the Act & on behalf of the Crown, gave the notices in order to ascertain whether the lands could be purchased for the sum limited by sect. 1, which, by the claims sent in, it appeared they could not, & on demurrer to the return:—*Held*: the Comrs. under the statute were acting in a public capacity, & the notice given by them did not constitute a quasi-contract enforceable by mandamus.—*R. v. WOODS & FORESTS COMRS., Ex p. BUDGE* (1850), 15 Q. B. 761; 19 L. J. Q. B. 497; 15 L. T. O. S. 561; 15 Jur. 35; 117 E. R. 646.

Annotations:—*Consd. Birch v. St. Marylebone Vestry* (1869), 20 L. T. 697. *Appl. R. v. Income Tax Special Purposes Comrs.* (1888), 21 Q. B. D. 313. *Refd. R. v. I. R. Comrs., Re Nathan* (1884), 12 Q. B. D. 461. *Mentd. Steele v. Liverpool Corp.* (1866), 7 B. & S. 261; *Guest v. Poole & Bournemouth Ry.* (1870), L. R. 5 C. P. 553.

1178. *Commissioners of Excise.*—*Qu.*: whether a writ of mandamus can be issued to the Comrs. of Excise.—*R. v. EXCISE COMRS.* (1845),

issued, has not lapsed.—*AWATERE ROAD BOARD v. COLONIAL TREASURER* (1887), 5 N. Z. L. R. 372.—N.Z.

c. *Federal officer.*—*To perform duties of office.*—The State Ct. has no power to grant a mandamus to compel a Federal officer to perform duties imposed upon him by the Federal Parliament, although the duties are per-

formed within the State.—*Ex p. GOLDRING* (1903), 3 S. R. N. S. W. 260; 20 N. S. W. W. N. 96.—AUS.

d. *Governor of State.*—*Mandamus* will not lie to the governor of a State to compel him to do an act in his capacity of governor.—*R. v. SOUTH AUSTRALIA (GOVERNOR)* (1907), 4 C. L. R. 1497.—AUS.

e. — *Ex p. O'DONNOGHUE* (1874), 2 C. A. 495.—N.Z.

f. — *To remit prisoner's punishment.*—*Mandamus* will not lie to the governor of a State to remit the punishment of a prisoner.—*HORWITZ v. CONNOR* (1908), 6 C. L. R. 38.—AUS.

Sect. 1.—The prerogative writ: Sub-sect. 4, A., B. & C.]

6 Q. B. 975; 14 L. J. Q. B. 179; 4 L. T. O. S. 395; 9 Jur. 618; 115 E. R. 367.

1179. Commissioners of Stamps & Taxes—Repayment of excess duty.—The ct. will not grant a rule calling upon the Commissioners of Stamps & Taxes to show cause why they should not return to exors. an excess of probate duty, under Railway Passenger Duty Act, 1842 (c. 79), s. 23.—*In the Goods of WEBSTER* (1859), 1 L. T. 45; 24 J. P. 24.

1180. Commissioners of Inland Revenue—Repayment of excess duty.—*R. v. INLAND REVENUE COMRS., Re NATHAN*, No. 894, *ante*.

1181. Commissioners of Income Tax—Repayment of excess tax.—Appcts. applied under Income Tax Act, 1842 (c. 35), s. 133, for a return of duties paid for three successive preceding years, & after hearing evidence, the district comrs. amended the assessment for these years, & issued three certificates to the Comrs. for Special Purposes, certifying the amount so overpaid. The Comrs. for Special Purposes had laid down an office rule that no such application should be heard, or certificate would be acted on by them where the application was made more than a year after the year current at the time of making the assessment, & issued their order in accordance with such rule for repayment only of the amount overpaid in the last year, & refused to do so in respect of the two preceding years. Appcts. applied for a mandamus to compel the comrs. to issue orders for payment of the amount of the two preceding years:—*Held*: mandamus was the proper remedy to compel repayment of amounts certified to be overpaid.—*R. v. INCOME TAX SPECIAL PURPOSES COMRS.* (1888), 21 Q. B. D. 313; 53 J. P. 84; 36 W. R. 776; 4 T. L. R. 636; *sub nom. R. v. INCOME TAX SPECIAL COMRS., Ex p. CAPE COPPER MINING CO., LTD.*, 57 L. J. Q. B. 513; 50 L. T. 455; 2 Tax Cas. 332, C. A.

Annotations.—*Consd. R. v. Income Tax Special Purposes Comrs., Ex p. Barnardo's Homes National Incorporated Assocn.*, [1920] 1 K. B. 26. *Mentd. Furtado v. City of London Brewery Co.*, [1914] 1 K. B. 152; *R. v. Bloomsbury Income Tax Comrs.*, [1915] 3 K. B. 768; *L. C. C. v. Galsworthy*, [1917] 1 K. B. 85; *R. v. Board of Trade, Ex p. Derry* (1917), 33 T. L. R. 316; *R. v. Nat Bell Liquors*, [1922] 2 A. C. 128.

1182. — To make allowances.—In a case where an allowance, which ought to be granted under Income Tax Act, 1842 (c. 35), s. 61, No. VI., is refused, mandamus lies to the comrs. commanding them to grant the allowance & to give a certificate of the allowance with an order for the payment thereof.—*INCOME TAX SPECIAL PURPOSES COMRS. v. PEMSEL*, [1891] A. C. 531; 61 L. J. Q. B. 265; 65 L. T. 621; 55 J. P. 805; 7 T. L. R. 657; 3 Tax Cas. 53, H. L.; *affg. S. C. sub nom. R. v. INCOME TAX COMRS.* (1888), 22 Q. B. D. 296, C. A.

Annotations.—*Consd. R. v. Income Tax Special Purposes Comrs., Ex p. Barnardo's Homes National Incorporated Assocn.*, [1920] 1 K. B. 26. *Refd. R. v. Income Tax Special Comrs., Ex p. University College of North Wales* (1909), 78 L. J. K. B. 576; *R. v. Income Tax Comrs.* (1911), 80 L. J. K. B. 788; *R. v. Income Tax Special Comrs., Ex p. Rank's Trustees* (1922), 91 L. J. K. B. 311; *Mentd. Charterhouse School v. Lamarque* (1890), 25 Q. B. D. 121; *I. R. Comrs. v. Scott*, *Re Bootham, Ward Strays, York.*, [1892] 2 Q. B. 152; *Re Foveaux, Cross v. London Anti-Vivisection Soc.*, [1895] 2 Ch. 501; *Re Nottage, Jones v. Palmer*, [1895] 2 Ch. 649; *Southwell v. Royal Holloway College, Egham*, [1895] 2 Q. B. 487; *Cunnack v. Edwards*, [1896] 2 Ch. 679; *Re Buck, Bruty v. Mackey*, [1896] 2 Ch. 727; *Re Macduff, Macduff v. Macduff*, [1896] 2 Ch. 451; *Re Perry Almshouses, Re Ross' Charity*, [1899] 1 Ch. 21; *Blair v. Duncan*, [1902] A. C. 37; *L. C. C. v. South Metropolitan Gas Co.*, [1903] 2 Ch. 532; *Re Church Patronage Trust, Laurie v. A.-G.*,

[1904] 2 Ch. 643; *Grimond v. Grimond*, [1905] A. C. 603; *Lord Advocate v. Moray*, [1905] A. C. 531; *Re Good, Harrington v. Watts*, [1905] 2 Ch. 60; *Re Manser, A.-G. v. Lucas*, [1905] 1 Ch. 68; *Re Sidney, Hingeston v. Sidney* (1908), 98 L. T. 625; *Re Wedgwood, Allen v. Wedgwood*, [1915] 1 Ch. 113; *Re Verrall, National Trust for Places of Historic Interest or Natural Beauty v. A.-G.*, [1916] 1 Ch. 100; *G. W. Ry. & Mid. Ry. v. Bristol Corpn.* (1918), 87 L. J. Ch. 414; *Houston v. Burns*, [1918] A. C. 337; *Bourne v. Keane*, [1919] A. C. 815; *Re Bennett, Gibson v. A.-G.*, [1920] 1 Ch. 305; *Rotunda Hospital, Dublin v. Coman* (1920), 7 Tax Cas. 517; *Re Tetley, National Provincial & Union Bank of England v. Tetley* (1922), 39 T. L. R. 45.

1183. — — — — ——*R. v. INCOME TAX SPECIAL PURPOSES COMRS., Ex p. DR. BARNARDO'S HOMES NATIONAL INCORPORATED ASSOCN.*, No. 1810, *post*.

B. Superior Courts.

As to superior courts, see COURTS, p. 131, *ante*.

1184. The Chief Justice of England.—The Ct. of Ch. presumed that the Chief Justice of England would do what was just in any case & refused to issue a mandatory writ to him to sign a bill of exceptions in a criminal case.—*RIOTERS' CASE* (1683), 1 Vern. 175; 1 Eq. Cas. Abr. 414, pl. 2; 23 E. R. 396.

Annotation.—*Refd. R. v. Preston upon the Hill in Cheshire* (1736), Sess. Cas. K. B. 197.

1185. Judicial Committee of Privy Council.—(1) Where a cause has been brought before the Judicial Committee of the Privy Council on appeal from the Ct. of Arches, & the Judicial Committee has decided in favour of the appeal, at the same time retaining the principal cause, & ordering the unsuccessful party to appear absolutely, subject to the approbation of the King in Council, which approbation has been afterwards given, this ct. cannot, on a suggestion of error in the decision, issue a mandamus to the Privy Council to receive a petition for a rehearing of the appeal.

(2) Nor will the ct. issue a prohibition to the Committee, on a complaint that they have exceeded their jurisdiction in ordering the party to appear absolutely, it not being shown that they have either transgressed the general law of the land, or interfered in any matter not of ecclesiastical cognisance.

(3) *Semble*: the Ct. of Exch. has jurisdiction to issue a prohibition to the Judicial Committee, if they exceed their jurisdiction.—*Ex p. SMYTH* (1835), 3 Ad. & El. 719; 1 Har. & W. 128, 417; 4 Nev. & M. K. B. 582; 111 E. R. 587.

Annotations.—*As to* (1) *Consd. Howard v. Gosset, Howard* (1847), 6 State Tr. N. S. 319; *Combe v. Edwards* (1878), 3 P. D. 103. *Refd. R. v. Canterbury Archbp.* (1848), 11 Q. B. 483; *Martin v. Mackonochie* (1879), 4 Q. B. D. 697; *Re London Scottish Permanent Bldg. Soc.* (1893), 63 L. J. Q. B. 112. *As to* (2) *Consd. Ex p. Story* (1852), 8 Exch. 195. *Refd. Combe v. Edwards* (1878), 3 P. D. 103; *Martin v. Mackonochie* (1879), 4 Q. B. D. 697. *As to* (3) *Refd. Ex p. Story* (1852), 8 Exch. 195; *Martin v. Mackonochie* (1879), 4 Q. B. D. 697.

1186. Central Criminal Court.—The Central Criminal Ct. is a superior ct. & mandamus will not lie to compel the judges & justices thereof to order restitution of stolen goods under Larceny Act, 1861 (c. 96), s. 100.—*R. v. CENTRAL CRIMINAL COURT JJ.* (1883), 11 Q. B. D. 479; 52 L. J. M. C. 121; 15 Cox, C. C. 324; 47 J. P. Jo. 116, D. C.

Annotation.—*Refd. Re Woodall* (1888), 57 L. J. M. C. 71.

1187. Whether to judge of assize.—Acting within discretion.]—Under Forcible Entry Act, 1429 (c. 9), if an indictment for forcible entry & detainment be found by the grand jury at the assizes, & application be thereon made to the judge of assize to grant

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g. Whether to judges of Common Pleas—Acting as justices of the peace.—*Ex p. LEONARD* (1849), 6 N. B. R. (1 All.) 269.—CAN.

a warrant of restitution, it is in his discretion whether he will grant it or not. Therefore, when the judge, upon such application, made on affidavit, granted a rule *nisi*, which he afterwards, upon cause shown on affidavit, discharged, & a motion was made to this ct., but without removing the indictment, for a mandamus to the judge, or a warrant of restitution, the ct. refused to interfere, nor would they enter into the question whether the judge had exercised the discretion rightly.—*R. v. HARLAND* (1838), 8 Ad. & El. 826; 2 Lew. C. C. 170; 1 Per. & Dav. 93; 1 Will. Woll. & H. 604; 8 L. J. M. C. 60; 3 J. P. 485; 112 E. R. 1051.

As to mandamus to admit candidate to Convocation, see ECCLESIASTICAL LAW.

C. Inferior or Ministerial Officers.

1188. General rule.—A county treasurer delivered in documents, consisting of separate papers, containing respectively the clerk of the peace's account of the county rate, & other charges to the treasurer's debit, & also the bills which he paid, & the vouchers. At the same time he exhibited his book of entries of the sums received & paid. The justices compared the book with the documents, deposited the documents & vouchers with the clerk of the peace, signed the treasurer's discharge in his book of entries, & returned it to him so signed:—*Held*: a mandamus would lie to the treasurer to deposit the book with the clerk of the peace.

Where we find a public officer, who has received an order from his masters or any competent authority, & who on disobeying that order will be liable to indictment, we do not proceed by mandamus. The ct. leaves the case to the ordinary remedies, not because the party is too low, but because he has received an order from competent authority. Here the magistrates have issued no order, & this distinguishes the case from *R. v. Bristow* [No. 1191, *post*], & *R. v. Jeyes* [No. 1194, *post*], in one of which there was an order by the magistrates, & in the other an order by the judge of assize (COLERIDGE, J.).—*R. v. PAYN* (1837), 6 Ad. & El. 392; 1 Nev. & P. K. B. 524; Nev. & P. M. C. 214; Will. Woll. & Dav. 142; 6 L. J. M. C. 62; 1 J. P. 37; 1 Jur. 54; 112 E. R. 150.

Annotation:—*Mentd. R. v. Kensington* (1848), 12 Q. B. 654.

1189. Clerk of city company—Menial officers of corporation.—A mandamus was moved for to be directed to the late clerk of the Blacksmith's Co. in London, to deliver over to the present officer all public books of the co.:—*Held*: in the case of menial officers of a corp'n. these motions were never granted, but in the present case a mandamus

would issue.—*ANON.* (1730), 1 Barn. K. B. 402; 94 E. R. 271.

1190. Treasurer to guardians.—The guardians of the poor of S., who were incorporated under 13 Geo. 3, c. 50, ordered the treasurer appointed under that Act to pay a sum of money for a purpose different from those mentioned in the Act, against which an appeal was entered at sessions under the Act, where that sum was disallowed in the account, & the treasurer who had paid it, was ordered to repay it to the succeeding treasurer:—*Held*: a mandamus to compel the late treasurer to pay over the money according to the order of sessions would be refused, because he was a ministerial officer & bound to obey the order of the guardians.—*R. v. SHAW* (1794), 5 Term Rep. 549; 101 E. R. 307.

Annotation:—*Consd. R. v. Jeyes* (1835), 3 Ad. & El. 116.

1191. County treasurer.—The ct. will not grant a mandamus to a ministerial officer, such as the treasurer of a county, to obey an order of the ct. of quarter sessions, but the proper remedy in case of his refusal to obey such order is by indictment.—*R. v. BRISTOW* (1795), 6 Term Rep. 168; 101 E. R. 492.

Annotations:—*Consd. R. v. Jeyes* (1835), 5 Nev. & M. K. B. 101; *R. v. Payn* (1837), 6 Ad. & El. 392. *Refd. R. v. Staffordshire JJ.* (1835), 1 Har. & W. 277; *Ex p. Bottom* (1849), 13 Jur. 680. *Mentd. Scott v. Scott*, [1913] A. C. 417.

1192. ——*R. v. SURREY COUNTY TREASURER* No. 1113, *ante*.

1193. — Not acting under orders.—*R. v. PAYN*, No. 1188, *ante*.

1194. Borough treasurer.—A mandamus will not lie to a treasurer of a borough to compel him to pay costs to witnesses under the order of a judge, founded on Criminal Law Act, 1826 (c. 64), the treasurer being a ministerial officer, & subject for his refusal to an indictment.—*R. v. JEVES* (1835), 3 Ad. & El. 416; 1 Har. & W. 325; 5 Nev. & M. K. B. 101; 111 E. R. 471.

Annotations:—*Consd. R. v. Payn* (1837), 6 Ad. & El. 392; *R. v. Wood Ditton* (1849), 3 New Mag. Cas. 166. *Refd. R. v. Wiltshire & Berkshire Canal Navigation Co.* (1835), 5 Nev. & M. K. B. 314; *R. v. Oswestry Treasurer* (1843), 12 Jur. 744; *Scott v. Scott*, [1913] A. C. 417; *R. v. Speyer*, *R. v. Cassel*, [1916] 1 K. B. 595.

1195. Prison gaoler—Acting under rules of Secretary of State.—Under Queen's Prison Act, 1842 (c. 22), for regulating the Queen's Prison, the ct. directed a peremptory mandamus to the keeper of the prison to make allowances out of certain funds specified in the Act, to a prisoner confined there, as it did not appear that such allowance had been prohibited by any order of the Secretary of State for the regulation of the prison, & it was shown that the prisoner was in great want,

mus will lie to a municipal council to issue a trade licence.—*R. v. VICTORIA CORPN.* (1888), 1 B. C. R. Pt. II. 331.—*CAN.*

s. — Not against officers.—A mandamus for the demolition of a projection over a city street should be asked against the city corp'n. & not against one of its officers.—*PETTIGREW v. BAILLARGE* (1901), Q. R. 20 S. C. 173.—*CAN.*

t. Prison gaoler.—Where a gaoler refused to receive from a sheriff a debtor taken under mesne process a peremptory writ of mandamus was directed to go to compel the gaoler to receive the debtor.—*Re STODDART*, *Ex p. FORMAN*, Mac. 281.—*N.Z.*

u. Registrar of Deeds.—The ct. refused a mandamus to compel a registrar to register a deed on a declaration of its execution made in England under 5 & 6 Will. 4, c. 62,

PART VI. SECT. 1, SUB-SECT. 4.—C.

h. Boundary Commissioners — To return proceedings.—Mandamus will be granted against boundary line comrs. if they do not return the proceedings within fourteen days after notice of appeal.—*DELONG v. STRIKER* (1840), 2 Ont. Dig. 4141.—*CAN.*

k. Clerk of the Crown & Peace.—Mandamus directed to the Clerk of the Crown & Peace, commanding him to receive & enter notice of appeal.—*R. (FARRELL) v. FOTRELL* (1915), 50 I. L. T. 54.—*IR.*

l. Lands & Works Commissioner — To issue mining certificates.—*R. v. VICTORIA GOLD COMR.* (1886), 1 B. C. R. Pt. II., 260.—*CAN.*

m. — Not to issue Crown grant.—*CLARKE v. LANDS & WORKS CHIEF COMR.* (1886), 1 B. C. R. Pt. II. 328.—*CAN.*

n. Licensing Board — To compel issue of fresh hotel licence.—Where the

composition of a licensing board was changed after a refusal to grant a licence & applt. applied to the new board for a renewal, or for a fresh licence, which applications were also finally refused. Mandamus was issued to the new Board ordering the granting of a licence unconditionally.—*PRUDHOMME v. PRINCE RUPERT CITY, BOARD OF LICENSE COMRS.* (1911), 16 B. C. R. 487.—*CAN.*

o. Licensing inspectors — Not to examine houses fitted up as saloons & to grant certificate.—*Re BAXTER & HESSON* (1854), 12 U. C. R. 139.—*CAN.*

p. Mining Commissioners — To decide on application for mining lease.—*DRYSDALE v. DOMINION COAL CO.* (1904), 34 S. C. R. 328.—*CAN.*

q. — To grant mining claim.—*Re MACLENNAN* (1907), 7 W. L. R. 209.—*CAN.*

r. Municipal council.—A manda-

Sect. 1.—The prerogative writ: Sub-sect. 4, C. & D.; sub-sect. 5, A. (a) & (b).]

& that the allowance had been refused to him upon application.—*Ex p. LONG* (1844), 14 L. J. Q. B. 23; 8 J. P. Jo. 788; *subsequent proceedings* (1845), 14 L. J. Q. B. 146.

1196. Clerk to justices.—It is the duty of justices convicting to cause the conviction to be lodged with the Clerk of the Peace, pursuant to Summary Jurisdiction Act, 1848 (c. 43), s. 14, but the clerk to the justices, being only their servant, a mandamus cannot be granted to compel him to lodge all the convictions which have been made by the justices during a certain period.—*Ex p. HAYWARD* (1863), 3 B. & S. 546; 32 L. J. M. C. 89; 27 J. P. 102; 9 Jur. N. S. 820; 122 E. R. 206.

1197. Town clerk—Correction of burgess roll.—In making out the burgess roll for a municipal borough the names of 82 persons were put in the wrong wards, & the mistake was not discovered till after the revising barrister settled the list:—*Held*: the proper remedy was not a mandamus to the town clerk to correct the roll.—*Re EASTBOURNE (TOWN CLERK). Ex p. KEAY* (1891), 60 L. T. 323; *sub nom. Ex p. KEAY*, 56 J. P. 470, D. C.

Annotation:—*Consd. R. v. Hanley Revising Barrister, R. v. Stoke-on-Trent Town Clerk*, [1912] 3 K. B. 518.

1198. ————*—R. v. HANLEY REVISING BARRISTER, R. v. STOKE-ON-TRENT TOWN CLERK*, No. 965, *ante*.

1199. Revising barrister—Correction of burgess roll.—*R. v. HANLEY REVISING BARRISTER, R. v. STOKE-ON-TRENT TOWN CLERK*, No. 965, *ante*.

1200. Ministerial officer merely nominal party.—The general rule that indictment & not mandamus is the proper mode of enforcing obedience by a ministerial officer to an order of sessions, does not prevail where the ct. sees that the ministerial officer is put forward merely as a nominal party, & that other persons are those who are to be compelled to perform the duty.—*R. v. WOOD DITTON (HIGHWAYS SURVEYORS)* (1849), 3 New Mag. Cas. 166; 18 L. J. M. C. 218; 13 L. T. O. S. 233; 13 J. P. 825; *sub nom. Ex p. BOTTOM*, 13 Jur. 680.

D. Inferior Tribunals.

Purposes for which writ available to inferior tribunals, *see* Sub-sect. 5, A., *post*.

Arbitrators.—*See* ARBITRATION, Vol. II., pp. 382, 431, Nos. 436, 808–812.

Assessment Committee.—*See* RATES & RATING. **Charity trustees.**—*See* CHARITIES, Vol. VIII., p. 388, No. 2073.

County courts.—*See* COUNTY COURTS, Vol. XIII., pp. 552, 553, Nos. 1095–1102.

Commissioners under National Insurance Act, 1911 (c. 55).—*See* WORK & LABOUR.

Ecclesiastical authorities.—*See* ECCLESIASTICAL LAW.

Election Commissioners.—*See* ELECTIONS.

substituting declarations for oaths.—*Re LYONS* (1843), 6 O. S. 627.—*CAN.*

b. Registrar of Shipping.—A mandamus lies to compel the registrar to register the transfer of a ship sold in execution of decree.—*Re SHAH CALLANDER* (1865), 1 Ind. Jur. N. S. 263.—*IND.*

c. Revising officer—Electoral Franchise Act, 48 & 49 Vict., c. 40 (D).—Mandamus to a revising officer to hold a sittings & adjudicate upon a complaint to have a name struck off the voters' list.—*Re SIMMONS & DALTON* (1886), 12 O. R. 505.—*CAN.*

d. School teacher.—Mandamus does

not lie to force a teacher, against his *bona fide* judgment on reasonable grounds, to keep a pupil at his school, but may force him to hold a proper inquiry.—*PHILPS v. WILLIAMS* (1883), 1 B. C. R. Pt. I. 257.—*CAN.*

e. Secretary-Treasurer of municipality—Municipal Act, s. 663.—*LONDON & CANADIAN LOAN & AGENCY CO. v. MORRIS RURAL MUNICIPALITY* (1893), 9 Man. L. R. 377.—*CAN.*

f. Sewers Commissioners—To compel assessment of marsh lands.—*Ex p. DIXON* (1911), 10 E. L. R. 383.—*CAN.*

g. Sheriff—To execute writ—Man-

Licensing authorities.—*See* INTOXICATING LIQUORS.

Local authorities.—*See* LOCAL GOVERNMENT; PUBLIC HEALTH & LOCAL ADMINISTRATION; SEWERS & DRAINS.

Lunacy Commissioners.—*See* LUNATICS & PERSONS OF UNSOUND MIND.

Medical Council.—*See* MEDICINE & PHARMACY. **Magistrates, recorders, sessions & justices.**—*See* MAGISTRATES.

Manorial courts.—*See* COPYHOLDS, Vol. XIII., pp. 33–36, Nos. 316, 317, 337, 341, 343–345, 369–372, 378, 380, 384–386.

Military Tribunals.—*See* ROYAL FORCES.

Railway & Canal Commissioners.—*See* RAILWAYS & CANALS.

Registration officers—Under Representation of the People Act, 1918 (c. 64).—*See* ELECTIONS.

Visitors of charities.—*See* CHARITIES, Vol. VIII., pp. 387, 390, Nos. 2016, 2101–2110.

SUB-SECT. 5.—PURPOSES FOR WHICH WRIT AVAILABLE.

A. To Inferior Tribunals.

(a) In General.

To whom the writ may or may not issue.—*See* Sub-sect. 4, *ante*.

1201. To perform ministerial act—Not judicial act.—The duty imposed on the Insolvent Ct. by Judgments Act, 1838 (c. 110), s. 92, is a judicial & not a merely ministerial duty, & therefore, where the Insolvent Ct. had refused to make an order for vesting the surplus property in a person claiming under the deed of assignment made to him by the insolvent, there being rival claimants, on the ground that the deed was not valid, the ct. refused to compel the Insolvent Ct. by mandamus to make the order.—*R. v. LAW* (1857), 7 E. & B. 366; 26 L. J. Q. B. 126; 3 Jur. N. S. 487; 5 W. R. 285; 119 E. R. 1283; *subsequent proceedings, sub nom. Re DYSON, Ex p. COOK* (1860), 2 E. & E. 586.

Annotation:—*Consd. Cook v. Sturgis* (1859), 28 L. J. Ch. 345.

1202. ————*—Re KEMP & ATTENBOROUGH, Ex p. ATTENBOROUGH* (1859), 32 L. T. O. S. 204.

1203. ————*—Re DYSON, Ex p. COOK*, No. 1223, *post*.

1204. ————*—Re ANNANDALE DISTRICT, CUMBERLAND LICENSING COMMITTEE* (1873), 37 J. P. Jo. 85.

1205. ————*—R. v. MARSHAM* (1883), 50 L. T. 142; 48 J. P. 308; 32 W. R. 157, C. A.

1206. ————*—The ct. will not by mandamus order a judicial tribunal to act in a particular way, unless it is quite plain that what it has to do is purely ministerial & not judicial.*—*R. v. KINGSTON JJ., Ex p. DAVEY* (1902), 86 L. T. 589; 66 J. P. 547; 18 T. L. R. 477; 46 Sol. Jo. 394, D. C.

Annotation:—*Mentd. R. v. Farnham JJ., Ex p. Smith* (1902), 86 L. T. 839.

damus not proper remedy.—*PETERSON v. MCLENNAN*, [1907] V. L. R. 94.—*AUS.*

h. ————*—Mandamus is not the proper proceeding to compel a sheriff to execute a writ.*—*BLACK v. KENNEDY* (1877), 4 temp. Wood. 144.—*CAN.*

PART VI. SECT. 1, SUB-SECT. 5.—A. (a).

k. General rule.—The purpose of the writ is to compel inferior tribunals to do justice, it will not lie to aid what is illegal.—*R. v. LITTLEDALE* (1882), 10 L. R. Ir. 78.—*IR.*

1207. —.]—Upon an application for a distress warrant for arrears of lighting rate imposed under Lighting & Watching Act, 1833 (c. 90), the overseers produced evidence of the existence of the rate, & of the amount due & the demand for same. The justices refused the application, on the ground that evidence was not produced of all the provisions for the adoption of the Act having been duly carried out:—*Held*: upon proof by the overseers of their being required to levy the rate by the inspectors purporting to be appointed under the Act, & of the fact of such rate being in arrear, that duty of the justices was purely ministerial, & a mandamus must go to them to issue the warrant applied for.—*R. v. FRODSHAM JJ. & EDWARDS* (1893), 62 L. J. M. C. 120; 9 T. L. R. 456, D. C.

1208. —.]—K. was elected people's churchwarden of the parish of M. in 1914, & was re-elected in 1915. During his first year of office, he was convicted before the justices of brawling. After his election in 1915 the bishop of the diocese refused to admit him to make the necessary churchwardens' declaration:—*Held*: there was no right to refuse admission on the ground of bad character, & if there was such refusal, a mandamus would be issued to the bishop to perform what was merely a ministerial act.—*R. v. SARUM* (Bp.), [1916] 1 K. B. 466; 32 T. L. R. 203; *sub nom. R. v. SARUM* (Bp.), *Ex p. KENT*, 85 L. J. K. B. 544; 114 L. T. 366; 80 J. P. 53; 14 L. G. R. 335.

As to magistrates, *see* MAGISTRATES.

(b) *Where Discretion given & exercised.*

1209. Discretion given by statute—Inclosure commissioners.—The ct. will not grant a mandamus to inclosure comrs. to effect an exchange, where discretion was given to the comrs. & they had exercised it, & it is not shown that they have done so wrongfully.—*R. v. FLOCKWOLD INCLOSURE COMRS.* (1817), 2 Chit. 251.

1210. — Bishop of diocese—Church Discipline Act, 1840 (c. 86), s. 3.—*JULIUS v. OXFORD* (LORD PP.), No. 900, *ante*.

1211. — Public Worship Regulation Act, 1874 (c. 85), s. 9.—(1) A representation was sent to a bishop under the above Act complaining of an unlawful alteration to the fabric of a cathedral church. The bishop replied that having, in pursuance of the Act, considered the whole circumstances attending the representation he was of opinion that proceedings should not be taken for reasons which he stated at length. On an application for a mandamus to compel the bishop to proceed according to the Act, upon the ground that the bishop's reasons showed that he had not considered the whole circumstances of the case, & also had considered matters which were not circumstances of the case:—*Held*: the bishop had acted within his jurisdiction & exercised the discretion vested in him, & whether the reasons he gave were good or bad, the bishop having considered all the circumstances which appeared to him, honestly

exercising his judgment, to bear upon the particular case, his reasons could not be reviewed, & there was no ground for a mandamus.

(2) I do not deny that, where some authority has been entrusted with a discretion which they decline to exercise, a writ of mandamus is an appropriate writ to remedy such neglect of duty, though I very much doubt whether the particular form of peremptory mandamus here awarded could ever be justified under this Act [Public Worship Regulation Act, 1874 (c. 85)] (LORD HALSBURY, C.).—*ALLCROFT v. LONDON* (LORD BP.), *LIGHTON v. LONDON* (LORD BP.), [1891] A. C. 666; 61 L. J. Q. B. 62; 65 L. T. 92; *sub nom. R. v. LONDON* (Bp.), 55 J. P. 773; 7 T. L. R. 668, H. L.

Annotations:—Generally, Mentd. St. John, Pendlebury (Vicar) v. St. John, Pendlebury (Parishioners), [1895] P. 178; St. John the Baptist, Timberhill (Vicar) v. St. John the Baptist, Timberhill (Rectors, etc.), [1895] P. 71; Barsham, Suffolk (Rector, etc.) v. Barsham, Suffolk (Parishioners), [1896] P. 256; Great Bardfield v. All Having Interest, [1897] P. 185; Poulton v. Moore, [1915] 1 K. B. 400; Field v. Ommamney (1920), 36 T. L. R. 695; *Re St. Luke's, Southport* (1920), 36 T. L. R. 733.

1212. — Local Government Board.—The councils of certain metropolitan boroughs claimed contribution from the London County Council under London Govt. Act, 1899 (c. 14), s. 7, in respect of the expense of maintaining the roads in their boroughs which had ceased to be main roads under sect. 6 (1) of that Act, & failing to come to an agreement with the county council on the matter, applied to the Local Govt. Board under sect. 7 for an order requiring the county council to contribute. After a local inquiry, the matter was adjourned for consideration by the board. The board, who elected to determine the application otherwise than as arbitrators, then made an order that no contribution should be made by the county council. An affidavit sworn by an official of the board stated that the board did not reach this determination by any arbitrary exercise of the discretion entrusted to them, but considered the question judicially, & had come to the conclusion, in the exercise of their discretion:—*Held*: the board had exercised their jurisdiction under sect. 7, & the ct. could not interfere by mandamus.—*R. v. LOCAL GOVERNMENT BOARD, Ex p. HACKNEY BOROUGH COUNCIL* (1908), 72 J. P. 211; 6 L. G. R. 665, D. C.

See, further, LOCAL GOVERNMENT.

1213. — Income Tax Commissioners.—Under agreements made in 1909 & 1912, appets. paid their two managing directors a salary & 10 per cent. of the surplus of the co.'s net profits after making certain deductions, the rate & the terms of the commission not having been altered since 1912. In Nov. 1916, the Inland Revenue Comrs. served on appets. a notice of assessment to excess profits duty under Finance (No. 2) Act, 1915 (c. 89), in respect of the accounting period ending Dec. 31, 1915, & in arriving at the amount of the assessment, the comrs. limited the remuneration to be allowed to the managing directors to the

PART VI. SECT. 1, SUB-SECT. 5.—
A. (b).

m. *Discretion given by Statute—Local Government Act, 1903, Sched. 13, Part VI.*—A mandamus will lie to compel a municipal council to exercise their discretion as to granting or refusing an application for registration of a ground for public amusement under above Act.—*RANDALL v. NORTH-COTE COUNCIL* (1910), 11 C. L. R. 100.—AUS.

n. — *Meat Board.*—The Meat Board have under Meat Industry Act, 1915, absolute discretion to grant or withhold their consent to the slaughter-

ing of cattle on particular premises, & mandamus will not issue to compel them to give reasons for withholding it.—*METROPOLITAN MEAT INDUSTRY BOARD v. FINLAYSON* (1916), 22 C. L. R. 340.—AUS.

o. — 18 *Vic. c. 6.*—Comrs. entered into a contract for laying down pipes & conveying the water from a lake to a town, & required the corp. of the town to issue notes for the cost, which they refused:—*Held*: the issuing of the notes was discretionary with the corp., & a mandamus would not be granted.—*Ex p. COSTER* (1856), 8 N. B. A. (3 All.) 349.—CAN.

p. — *Commitment for non-payment of costs.*—Issuing a warrant of commitment for non-payment of costs of an appeal, under 32 & 33 *Vic. c. 31, s. 75*, is discretionary, & the ct. will refuse a mandamus to issue it.—*Re DELANEY v. MACNABB* (1871), 21 C. P. 563.—CAN.

q. —.]—Acts within the discretionary powers of a municipal corp. are not subject to judicial control except where fraud is shown or there is a manifest invasion of private rights.—*HAGGERY v. VICTORIA CITY* (1895), 4 B. C. R. 163.—CAN.

r. —.]—The cts. should not

Sect. 1.—The prerogative writ: Sub-sect. 5, A. (b), (c) & (d).]

amount allowed in the last pre-war trade year, & a further £2000 in each case, & refused to direct any further remuneration to be allowed. An application was made for a mandamus to the comrs. to deduct the whole of the remuneration of the managing directors from the profits on which appcts. were chargeable with excess profits duty for the period in question:—*Held*: under the parenthetic words in sched. IV., part 1 (5) of the above Act, the comrs. had a discretion, when there were special circumstances & when the remuneration of the managers or managing directors depended upon the profits of the trade or business, to direct what sum was to be allowed as an additional deduction.—*R. v. INLAND REVENUE COMRS.*, [1918] 1 K. B. 143; *sub nom. R. v. INLAND REVENUE COMRS., Ex p. FRANCE (WILLIAM), FENWICK & Co., LTD.*, 87 L. J. K. B. 198; 118 L. T. 162; 34 T. L. R. 118; 62 Sol. Jo. 120, C. A.

Annotations:—*Refd.* Williamson Film Printing Co. v. I. R. Comrs., [1918] 2 K. B. 720; Port of London Authority v. I. R. Comrs., [1920] 2 K. B. 612. *Mentd.* R. v. Income Tax Special Comrs., *Ex p. Dr. Barnardo's Homes* (1919), 122 L. T. 389.

— *Magistrates.*—*See* MAGISTRATES.

1214. By bishop of diocese—Consent to appointment of deputy registrar.—The registrars of a diocese were authorised by their patent of office, under the bishop's hand & seal, to appoint a deputy, to be approved of & allowed by the bishop; who, if he should not approve of & allow the deputy named & proposed to him, was empowered to nominate another, with a salary payable out of the profits of the registrarship. The registrars appointed a deputy, subject to the approbation & consent of the bishop who, on being informed of it, answered that for good & sufficient reasons he disapproved of the party nominated, but declined to specify his reasons:—*Held*: a rule *nisi* for a mandamus to the bishop to admit the deputy must be refused.—*R. v. GLOUCESTER (BP.)* (1831), 2 B. & Ad. 158; 9 L. J. O. S. K. B. 228; 109 E. R. 1102.

Annotation:—*Refd.* R. v. London Corpn. (1832), 3 B. & Ad. 255.

1215. — To examine curate with a view to licence.—*R. v. LIVERPOOL (BP.)* (1904), 20 T. L. R. 485, D. C.

By magistrates.—*See* MAGISTRATES.

By licensing committee—To confirm grant of licence.—*See* INTOXICATING LIQUORS.

1216. Improper exercise of discretion.—*Ex p. SMITH* (1852), 19 L. T. O. S. 191, 208; 16 J. P. Jo. 428.

1217. — Retiring pension of vestry officer.—A vestry, in declining to grant a superannuation allowance to a retiring officer, were influenced by the idea that they had no discretion as to the amount:—*Held*: the vestry had not properly exercised their discretion under Superannuation

(Metropolis) Act, 1866 (c. 31), s. 1, & a mandamus should go to them to consider & determine the application.—*R. v. ST. PANCRAS VESTRY* (1890), 24 Q. B. D. 371; 59 L. J. Q. B. 244; 62 L. T. 440; 54 J. P. 389; 38 W. R. 311; 6 T. L. R. 175, C. A.

Annotations:—*Mentd.* Smith v. Chorley District Council (1897), 76 L. T. 637; R. v. Board of Education, [1910] 2 K. B. 165; Webster v. Metropolitan Water Board (1912), 76 J. P. 474; Newton v. St. Marylebone B. C. (1916), 113 L. T. 531.

1218. — — — — ——*R. v. BROMLEY ST. LEONARD VESTRY* (1896), 60 J. P. 725; 13 T. L. R. 1; 41 Sol. Jo. 13, D. C.

See, further, ECCLESIASTICAL LAW.

1219. — — — — ——The London County Council, in exercise of statutory powers, made a bye-law relating to parks, gardens and open spaces, whereby the selling of any article, without the consent in writing of the council, was constituted an offence. After granting permission to sell literature at meetings in certain parks, they passed a resolution that the existing permissions should be determined, & that no new permission should be granted henceforth. Acting on this resolution they refused an application made by a certain society for permission to sell pamphlets at its meetings in one of the parks:—*Held*: there was vested in the council by virtue of the bye-law a discretion similar to that of justices at licensing sessions, & they did not properly exercise that discretion by passing a general resolution to grant no permission & acting on that resolution, & a rule for a mandamus to hear the application would be made absolute.—*R. v. LONDON COUNTY COUNCIL, Ex p. CORRIE*, [1918] 1 K. B. 68; 87 L. J. K. B. 303; 118 L. T. 107; 82 J. P. 20; 34 T. L. R. 21; 62 Sol. Jo. 70; 15 L. G. R. 889, D. C.

Annotation:—*Distd.* R. v. Port of London Authority, *Ex p. Kynoch*, [1919] 1 K. B. 176.

See, further, METROPOLIS; OPEN SPACES & RECREATION GROUNDS.

1220. Registrar of Companies—Registration of name of company.—Upon an application under Companies (Consolidation) Act, 1908 (c. 69), s. 15, to the Registrar of Companies to register a co., with the name "The Water Softening Materials Co. (Sofnol), Ltd.," the registrar refused to register it upon the ground that the name so nearly resembled that of "Water Softeners, Ltd.," an existing co. already registered, as to be calculated to deceive within the meaning of s. 8 (1) of the above Act. Appcts. applied for a writ of mandamus to the registrar to register the co. with that name upon the grounds that he was required to do so under s. 15, & that the name did not so nearly resemble that of any co., already registered, as to be calculated to deceive:—*Held*: the mandamus must be refused as there was no ground for saying that the registrar, in exercising his discretion, had come to a wrong decision.

In order to justify this ct. in interfering by mandamus, it would be necessary to show either that the registrar had not in fact exercised any

interfere by *mandamus* with the reasonable exercise by a county council of its discretion in selecting the place in the county at which an office shall be provided for the county Crown attorney & clerk of the peace.—*RODD v. ESSEX* (1910), 44 S. C. R. 137; 31 C. L. T. 255.—*CAN.*

s. — — — — ——If a judge refuses to consider an application to make a special entry on the record in a jury trial, that being a refusal to exercise the discretion vested in him by an Ordinance, *mandamus* will lie to compel him to do his duty; but if he has exercised his discretion & has decided not to direct a special entry

to be made there is an end of the matter & no appeal lies.—*R. v. LEO* (1914), App. D. 241.—*S. AF.*

t. Where discretion exercised.—The ct. will not grant *mandamus* to justices of an inferior ct. of common pleas, requiring them to enter up judgment for pltf. in an action of recognisance of bail in that ct., when such justices have in the exercise of their discretion set aside pltf.'s judgment & allowed a tender of the principal.—*LEDDEN v. RUSSELL* (1837), Ber. 350.—*CAN.*

s. — — — — ——Where a judge in the exercise of his discretion has given

judgment in a matter within his jurisdiction, *mandamus* will not lie to compel him to give a different judgment.—*Re JACKSON v. CLARK* (1900), 20 C. L. T. 42.—*CAN.*

b. — — — — ——The grant under 9 Edw. 7, c. 31, s. 10, of permission to a club to keep liquor on club premises for the use of its members, on payment of the prescribed fee by license comrs. is discretionary, & the ct. will not interfere by *mandamus* to compel them to grant permission, except in special circumstances.—*Re CLUB LAURIER* (1913), 23 W. L. R. 380; 10 D. L. R. 823.—*CAN.*

1221 vi. —.—.—Where an inferior tribunal improperly refuses to enter upon a complaint, a *mandamus* will issue.—*Re SPECIFIC RELIEF ACT, Re SARAFALLY MAMOOJI & JAFFER JUSUB* (1910). I. L. R. 34 Bom. 659.—**IND.**

(h) Other Cases.

1240. To make award—Inclosure commissioner.]—The ct. will grant a mandamus to the comr. appointed by an inclosure Act to make his award.—*ANON.* (1823), 2 L. J. O. S. K. B. 36.

1241. To furnish copies of depositions—To prisoner.]—*Ex p. FLETCHER* (1844), 13 L. J. M. C. 67; 2 L. T. O. S. 333; 8 Jur. 269.

Annotation:—Mentd. Ex p. Reynolds & Hodgson (1844), 8 Jur. 192.

1242. To enforce order—Sanitary authority.]—Nuisances Removal Act for England, 1855 (c. 121), s. 14, is permissive, & a mandamus will not be granted to compel the local authority to enforce an order on the default of the person upon whom it is made.—*Ex p. BASSETT* (1857), 7 E. & B. 280; 118 E. R. 1251; *sub nom. Re HAM LOCAL BOARD OF HEALTH*, 26 L. J. M. C. 64; 3 Jur. N. S. 136 5 W. R. 290.

Annotations:—Refd. R. v. Marshland Smeeth & Fen District Comrs., [1920] 1 K. B. 155. *Mentd. A.-G. & Dommes v. Basingstoke Corpn.* (1876), 45 L. J. Ch. 726.

1243. To compel poll of ratepayers to be taken—After decision given by Secretary of State.]—A meeting was duly held for the purpose of considering whether the ratepayers of M. would adopt Local Govt. Act, 1858 (c. 98). A resolution was moved & seconded in favour of the adoption, & the chairman of the meeting declared that it was carried. An appeal was presented to the Secretary of State for the Home Department, & he decided that the resolution had been carried, & that the vote of the meeting was valid. An application was made for a mandamus to compel the summoning officer to cause a poll of the ratepayers to be taken, for the purpose of ascertaining whether the Act should be adopted:—*Held: the matter had been determined by the Secretary of State, & the ct. could not interfere.*—*Ex p. BIRD* (1859), 1 E. & E. 931; 28 L. J. Q. R. 223; 33 L. T. O. S. 162; 23 J. P. 691; 5 Jur. N. S. 1009; 7 W. R. 476; 120 E. R. 1160.

Annotation:—Mentd. R. v. L. G. Board (1873), L. R. 8 Q. B. 227.

1244. To issue warrant of distress—For non-payment of costs awarded.]—In case of an appeal against a conviction, the informer, & not the justice, is the party appealed against, though the notice of appeal is to be served upon the latter, & although the informer do not appear at the sessions

to support the conviction, costs may be awarded to applt. against him. If the sessions award such costs, the Ct. of K. B. will, by *mandamus*, compel them to issue a warrant of distress for their payment.—*R. v. HANTS JJ.* (1830), 1 B. & Ad. 654; 9 L. J. O. S. M. C. 109; 109 E. R. 930.

Annotations:—Consd. R. v. Purdey (1864), 5 B. & S. 909. *Refd. R. v. Smith* (1860), 29 L. J. M. C. 216; *R. v. Davidson, Nanson & Morley* (1871), 24 L. T. 22; *R. v. Goodall* (1874), L. R. 9 Q. B. 557; *R. v. London JJ.*, [1895] 1 Q. B. 616; *R. v. Ashton, Ex p. Walker* (1915), 85 L. J. K. B. 27.

1245. To grant certificate of health—Civil Service Commissioners.]—*Re CIVIL SERVICE COMRS.* (1872), 36 J. P. Jo. 260.

1246. To add party—Administration action.]—Pltf. in an administration action in the county ct. sought to add as co-deft. a person who, having been mtgee. of certain real property of deceased, had exercised his power of sale. The county ct. judge had refused to make the order, on the ground that, as mtgee. so selling, he was only in the position of a debtor to the estate:—*Held: pltf. was entitled to a rule nisi for a mandamus to compel the county ct. judge to add such party.*—*GOODWIN v. LLOYD* (1885), 2 T. L. R. 188, D. C.

1247. To state a special case—Against opinion of court.]—The ct. will refuse to grant a mandamus to the Railway Comrs. to state a special case against their own opinion to raise questions of law which must, from their nature, involve inference of fact.

Qu.: (LORD COLERIDGE, (C.J.) whether it is competent for the ct. to mandamus the Railway Comrs. to state a case against their own opinion.—*RHYMNEY IRON CO. v. RHYMNEY RY. CO.*, *Ex p. RHYMNEY RY. CO.* (1888), 53 J. P. 309; 5 T. L. R. 121, D. C.; *subsequent proceedings, sub nom. Ex p. RHYMNEY RY. CO.*, 5 T. L. R. 134, C. A.

—By magistrates.]—*See MAGISTRATES.*

To issue summonses.]—*See MAGISTRATES.*

1248. Not to amend return to certiorari.]—*R. v. WILSON* (1834), 1 Ad. & El. 627; 3 Nev. & M. K. B. 753; 2 Nev. & M. M. C. 384; 3 L. J. M. C. 96; 110 E. R. 1347; *subsequent proceedings* (1835), 3 Ad. & El. 817.

Certiorari generally, see Part IX., post.

To county courts.]—*See COUNTY COURTS*, Vol. XIII., pp. 539, 552, 553, Nos. 913, 1095–1102.

To ecclesiastical authorities.]—*See ECCLESIASTICAL LAW.*

PART VI. SECT. 1, SUB-SECT. 5.—

A. (h).

1247 i. To state a special case.]—The decision of a county ct. on a rating appeal is not final, & a *mandamus* can be issued directing the judge to state the facts in the form of a special case for the opinion of the supreme ct.—*MELBOURNE TRAMWAY & OMNIBUS CO., LTD. v. FITZROY CORPN. & CITIZENS*, [1901] A. C. 153.—*AUS.*

h. To award costs.]—*Mandamus* refused to compel a ct. to award costs to pltf. in a summary action, & the pleadings subsequent to the declaration being special.—*FR v. GRIFFITH* (1850), 7 N. B. R. (2 All.) 93.—*CAN.*

k. To approve security—For appeal.]—*Mandamus* refused to compel a judge to approve the security tendered for appeal after time for such tender had expired.—*FOR v. CRABB* (1851), 8 U. C. R. 274.—*CAN.*

l. To reverse decision on practice point.]—*Mandamus* will not lie to judge of a ct. to reverse his decision on a point of practice.—*Re WOODS v. BENNETT* (1854), 12 U. C. R. 167.—*CAN.*

m. To hear where judge interested.]—A judge was interested with H., who was his brother-in-law, in his claim:

the judge declined to act in the matter, & *mandamus* to compel him to dispose of the case was refused.—*Re ELGIN COUNTY COURT JUDGE* (1861), 20 U. C. R. 588.—*CAN.*

n. To rescind order.]—*Mandamus* to compel a judge to grant a summons or take other proceedings for rescinding an order refused, as it would be interfering with the jurisdiction of a competent tribunal.—*Re ELGIN COUNTY COURT JUDGE & MACARTNEY* (1863), 13 C. P. 73.—*CAN.*

o. To sign order.]—*Mandamus* ordered to a judge to sign an order for payment of reward for apprehension of a horse thief.—*Re ROBINSON* (1877), 7 P. R. 239.—*CAN.*

p. To tax costs—Where certificate for full costs refused.]—Where a judge refused a certificate for full costs, a *mandamus* to him & the clerk of the ct. to tax such costs was refused.—*COOLICAN v. HUNTER* (1877), 7 P. R. 237.—*CAN.*

q. To sign judgment—Where defendant did not appear.]—Where deft. neglects to appear to a specially indorsed writ on a promissory note pltf. is entitled to sign judgment without production of the note; & a *mandamus* was granted to the county ct. to sign such judgment.—*Re OLIVER v. FRYER*

(1878), 7 P. R. 325.—*CAN.*

r. To recount votes on election.]—The ct. refused *mandamus* to the junior judge of the county ct. to proceed with the recount of votes under 41 Vict. c. 6, s. 14, as being a matter not within its jurisdiction, but belonging to Parliament alone.—*Re CENTRE WELLINGTON ELECTION* (1879), 44 U. C. R. 132.—*CAN.*

s. To sign certificate for appeal—After filing.]—Proceedings in appeal had been taken & an unsigned certificate of the judge filed within the proper time, under the belief that it had been properly signed, after the time for filing, an application was made to the judge to affix his signature:—

Held: the judge was right in refusing to sign & an application for mandamus was dismissed.—*ORR v. HARRETT* (1889), 6 Man. L. R. 300.—*CAN.*

t. To produce record of court.]—Where an inferior tribunal has adjudged against a party & C., where an appeal lay, refuses to complete the necessary papers & grant the appeal, the ct. will direct a *mandamus* to issue ordering the record of the ct. below to be sent up for a hearing.—*WHITE v. TOBIN* (1885), 7 Nfld. L. R. 42.—*NFLD.*

Sect. 1.—The prerogative writ: Sub-sect. 5, A. (h), B. & C.]

To Lunacy Commissioners.]—See LUNATICS & PERSONS OF UNSOUND MIND.

To local authorities.]—See LOCAL GOVERNMENT; PUBLIC HEALTH & LOCAL ADMINISTRATION; SEWERS & DRAINS.

B. Admission, Election and Restoration to Office.

1249. Office concerning administration of justice.]—There are two cases in which mandamus should be granted; (a) to restore one to an office which concerns the administration of justice; (b) if the office or degree be for the public weal (GLYN, C.J.).—LONDON'S (CLARK OF CITY WORKS) CASE (1658), 2 Sid. 112; 82 E. R. 1285.

1250. —.]—Mandamus issues for the restoration of the steward of a leet because his office is concerned with the administration of justice, but not for the steward of a ct. baron, because it is private.—MIDDLETON'S CASE (1663), 1 Sid. 169; cited in 15 Vin. Abr. at p. 197; 82 E. R. 1037; sub nom. R. & MIDDLETON v. NEW RIVER CORPN., 1 Keb. 629.

1251. Office of public nature.]—LONDON'S (CLARK OF CITY WORKS) CASE, No. 1249, ante.

1252. —.]—Motion for a mandamus to be directed to the Mayor & Aldermen of the City of London to restore T. to the office of woodward because it was an office in which he had a freehold:—Held: that reason would not do unless the office was of a public nature.—ANON. (1728), 1 Barn. K. B. 123; 94 E. R. 85.

1253. —.]—The ct. will not grant a mandamus to admit a vestry clerk, the office not being a fixed permanent one, & being merely of a private nature.—R. v. CROYDON (CHURCHWARDENS) (1794), 5 Term Rep. 713; 101 E. R. 396.

1254. Office of fixed permanent nature.]—R. v. CROYDON (CHURCHWARDENS), No. 1253, ante.

1255. —.]—A mandamus will not lie to the vicar, churchwardens, & inhabitants of a parish, to elect an organist, to the parish church, though there has always been such an officer beyond the time of living memory, & a yearly salary has been invariably paid him out of the church rates, as it is optional with the parishioners whether the organ shall be played.—R. v. ST. STEPHEN'S, COLEMAN STREET (VICAR, CHURCHWARDENS & INHABITANTS) (1844), 14 L. J. Q. B. 34; 4 L. T. O. S. 161; 9 J. P. 344; 9 Jur. 255; sub nom. Ex p. LE CREN, 2 Dow. & L. 571.

1256. —.]—As a mandamus to reinstate a person in an office only lies where the office, & its tenure, are of a permanent nature, it is not an available remedy for the secretary of a benefit society, who has been dismissed, by a resolution of a meeting of the society.—EVANS v. HEARTS OF OAK BENEFIT SOCIETY (1866), 12 Jur. N. S. 163.

1257. Office already full.]—This ct. does not grant a mandamus to appoint to an office which is already full (ABBOT, C.J.).—R. v. HEREFORDSHIRE JJ. (1819), 1 Chit. 700.

Annotation:—Mentd. Darley v. R. (1846), 12 Cl. & Fin. 520.

PART VI. SECT. 1, SUB-SECT. 5.—B.

1251 i. Office of public nature.—Minister for celebrating marriages.]—Mandamus issues to compel Registrar-General to register a minister of religion as a minister to celebrate marriages.—Ex p. HAY (1901), 1 S. R. N. S. W. 120; 18 N. S. W. N. 133.—AUS.

1251 ii. —.]—Unless applicant is carrying on religious services as a cloak for conducting marriage bureau.—Ex p. ZILLMAN (1907), 7 S. R. N. S. W.

362.—AUS.

1257 i. Where office is already full.]—Where one of two candidates was returned as elected at a municipal election & was sworn in & proceeded to act:—Held: the office being full, mandamus would not lie to compel the clerk to swear in the other candidate, who claimed to have been elected.—R. v. BURKE (1896), 29 N. S. R. 227.—CAN.

1257 ii. —.]—Where there is no

1258. —.]—R. v. STOKE DAMEREL (MINISTER & CHURCHWARDENS), No. 996, ante.

1259. —.]—Where a councillor's name has been expunged from the burgess roll, quo warranto is the proper mode to try his title to the office & not mandamus to the mayor to hold a fresh election.

It is quite clear that when an office is full, a new election shall not be had until the title of the person in office is decided upon by a quo warranto (LORD DENMAN, C.J.).—R. v. RICKETTS (1838), 3 Nev. & P. K. B. 151; 7 L. J. Q. B. 71; 2 Jur. 466.

1260. —.]—Where justices of the peace, having power to appoint a surgeon of the prison of C., appointed another in the place of one holding the office:—Held: the office being full, a mandamus would not lie.—HILL v. R. (1854), 8 Moo. P. C. C. 138; 14 E. R. 53, P. C.

1261. —.]—R. v. WELCHPOOL CORPN., No. 1140, ante.

1262. —.]—By a private Act, M. Hall in the University of Oxford was dissolved, II. College created, & the property of M. Hall transferred to II. College. An endowment for a lay fellowship restricted to members of certain specified churches was afterwards accepted by II. College. T., who was not a member of any of the specified churches, tendered himself for examination as a candidate, & was informed that he might be examined if he desired it, but he must understand that he would not be elected even if he stood at the head of the list. T. did not present himself for examination & M., a duly qualified candidate, was elected, after examination, to the fellowship. After the election T. applied to Q. B. Div. for a mandamus:—Held: (1) assuming that T. was refused examination, the office being full of a candidate properly qualified a mandamus would not lie commanding the college to examine T. & to proceed to an election; (2) T.'s remedy, if any, was by way of appeal to the visitor.—R. v. HERTFORD COLLEGE (1878), 3 Q. B. D. 693; 47 L. J. Q. B. 649; 39 L. T. 18; 42 J. P. 772; 27 W. R. 347, C. A.

1263. Not office held at pleasure.]—R. v. BODMIN CORPN., No. 1438, post.

1264. Mandamus to admit.—To test right to office.]—A mandamus lies to admit a party to the office of deputy register of the Prerogative Ct. of Y., though such office is a judicial one, & in a spiritual ct. It is no good return to such mandamus that the office is filled by another person, for a mandamus gives no right, but only entitles the party to bring an action to try the right.—R. v. WARD (1730), Fitz-G. 194; 1 Barn. K. B. 411; 2 Stra. 893; 94 E. R. 716.

Annotations:—Refd. R. v. Williams (1828), 8 B. & C. 681 R. v. Sowter (1900), 70 L. J. Q. B. 87.

1265. — To test validity of appointment.]—Re BARLOW, No. 1043, ante.

1266. — Applicant must show good title in omnibus.]—A mandamus will not lie to compel the high steward of a corpn. to admit a commoner, unless the person claiming to be so admitted show that he has a good title in omnibus.—R. v. MALMESBURY (HIGH STEWARD) (1840), 4 Jur. 222.

other remedy, the ct. has jurisdiction to grant a mandamus to compel an election, notwithstanding that the office is de facto filled.—R. v. CORK COUNTY JJ. (1910), 44 L. L. T. 120.—IR.

1264 i. Mandamus to admit.—To test right to office.]—A writ of mandamus may properly be issued for the purpose of testing the right to an office.—R. v. CUNNINGHAM (1885), 18 L. R. Ir. 373.—IR.

1267. Mandamus to elect—After colourable election.]—A mandamus will be granted after a colourable & void election.—*R. v. CAMBRIDGE CORPN.* (1767), 4 Burr. 2008; 98 E. R. 46.

*Annotations:—*Refld. *R. v. Bridgewater Corpn.* (1784), 3 Doug. K. B. 379; *R. v. Dublin Town Council* (1850), 15 L. T. O. S. 524; *R. v. Hertford College* (1878), 3 Q. B. D. 693. *Mentd.* *R. v. Godwin* (1780), 1 Doug. K. B. 397.

1268. ———.]—To found an application for a mandamus there must be a probable colour of an election laid before the ct.—*R. v. DAGGER LANE CHAPEL TRUSTEE* (1804), 2 Smith, K. B. 20.

1269. ———.]—It is an inflexible rule of law that where a person has been *de facto* elected to a corporate office, & has accepted & acted in the office, the validity of the election & the title to the office can only be tried by a proceeding on a *quo warranto* information. A mandamus will not lie unless the election can be shown to be merely colourable.—*R. v. CHESTER CORPN.* (1855), 25 L. J. Q. B. 61; 26 L. T. O. S. 71; 20 J. P. 197; 2 Jur. N. S. 114; 4 W. R. 14.

*Annotations:—*Consd. *R. v. Wolepool Corpn.* (1876), 35 L. T. 594. *Mentd.* *R. v. Boor*, [1903] 2 K. B. 693.

1270. Mandamus to restore—Judgment of removal in force.]—A peremptory mandamus for the restoration of an officer shall not be granted, so long as a judgment for his removal given by a jurisdiction able to remove him remains in force.—*R. v. BAINES* (1706), 2 Ld. Raym. 1265; 92 E. R. 332.

*Annotation:—*Mentd. *Fletcher v. Calthrop* (1845), 6 Q. B. 880.

1271. ——— Applicant must show *prima facie* title.]—Where the minister of an endowed dissenting meeting-house had been expelled by a majority of the congregation, the ct. refused a mandamus to restore him, applied for to enable him to justify his conduct, because it did not appear he had complied with all the requisites necessary to give him a *prima facie* title.—*R. v. JOTHAM* (1790), 3 Term Rep. 575; 100 E. R. 741.

*Annotation:—*Refld. *R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 404.

1272. ——— Right to office established by verdict—Judgment must be signed.]—A party whose right to an office has been established by a verdict cannot have a peremptory mandamus to restore him to his office until he has signed judgment in the action.—*NEALE v. BOWLES* (1835), 1 Har. & W. 584; *sub nom.* *BOWLES v. NEALE*, 7 C. & P. 262.

*Annotation:—*Refld. *R. v. Marshland Smeeth & Fen District Comrs.*, [1920] 1 K. B. 155.

1273. ——— No judicial hearing before removal.]—The practice of this ct. to interfere by writ of

mandamus for the restoration of a person who has been dismissed from the office of sexton, or any freehold office, without a hearing, will not now be departed from if a case be made out, though it appear that prosecutor has a remedy by action for money had & received, to recover the fees of the office.

The hearing which the ct. requires in such cases must be one in the nature of a judicial inquiry, the party proceeded against must have notice of it, & to justify his removal for want of appearance, the notice must distinctly acquaint him that the inquiry takes place with a view to his removal.—*Ex p. JOHNSON* (1853), 17 J. P. 538.

1274. ——— Jurisdiction to remove in inferior court.]—A mandamus to restore a proctor in Doctors' Commons to his office was refused on the ground that the K. B. could not correct errors in the proceedings of the spiritual cts. which had proper jurisdiction & cognisance of the matter.—*LEE v. OXENDEN* (1691), 3 Salk. 230; 91 E. R. 794.

Churchwardens, sextons, parish clerks, vestry clerks, etc.]—See ECCLESIASTICAL LAW.

Commissioners of Sewers.]—See SEWERS & DRAINS.

Directors of companies.]—See CORPORATIONS, Vol. XIII., p. 315, No. 488; COMPANIES.

Livery companies.]—See CORPORATIONS, Vol. XIII., p. 438, No. 1620.

Master of workhouse.]—See POOR LAW.

Officers, etc. of corporations.]—See CORPORATIONS, Vol. XIII., pp. 305, 307, 315, 316, 319–323, Nos. 372, 393, 395–398, 486–498, 542–574, 576, 578, 579, 592; LOCAL GOVERNMENT.

To officers, etc. of charitable corporations.]—See CHARITIES, Vol. VIII., pp. 368, 386, 390, Nos. 1741, 2015–2023, 2025–2027, 2101, 2106–2110.

Physicians, chemists, etc.]—See CORPORATIONS, Vol. XIII., p. 315, No. 487; MEDICINE & PHARMACY.

C. Delivery up, Inspection and Production of Documents.

See, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

1275. Delivery up of records to successor—Corporation books.]—Mandamus will lie, on the removal of an officer, directing him to deliver records, etc. to the new officer.—*NOTTINGHAM'S (SHERIFF & TOWN CLERK) CASE* (1661), 1 Sid. 31; 82 E. R. 951.

1276. ——— Parish books.]—A mandamus will not lie to the old churchwardens, to deliver the

1267 i. Mandamus to elect.]—The ct. will grant a mandamus to compel the visitors of a college to hear & determine the appeal of a party who complains of an undue election of a scholar.—*R. v. TRINITY COLLEGE* (1845), 9 I. L. R. 41.—IR.

1267 ii. ——— After colourable election.]—The ct. will direct a mandamus to issue when there has been no election at all, or even a colourable election; but if there has been a formal election, & an objection has been made to a person or persons as not being duly qualified to vote at such election, then a *quo warranto* would be the proper writ to issue.—*R. v. TUAM TOWN COMRS.* (1859), 11 Ir. Jur. 48.—IR.

1270 i. Mandamus to restore.]—The town clerk of a borough after his removal from office, disputed the validity of the appointment of his successor, & sued the council for salary subsequent to such removal.—*Held*: such action could not be maintained, the proper remedy was by mandamus to council to reinstate him in office.—

SMITH v. CLUNES CORPN. (1868), 5 W. W. & A. B. 86.—AUS.

1270 ii. ——— Not where office held during pleasure.]—*R. v. MELBOURNE HARBOUR TRUST, Ex p. DEDEKIND*, [1913] V. L. R. 258.—AUS.

1270 iii. ———.]—If a corpn. remove a pilot, appointed during pleasure, without assigning any cause, a mandamus will not lie to restore him.—*Ex p. LANGEN* (1855), 8 N. B. R. (3 All.) 135.—CAN.

1273 i. ——— No judicial hearing before removal.]—Appet., a permanent official of a corpn. was dismissed by resolution of the council passed at a meeting of which he had no notice, & without his having had an opportunity of being heard.—*Held*: the appot. was entitled to a mandamus, with costs, to restore him to the office from which he was so removed.—*R. v. HALIFAX CITY, Re STEVENS* (1915), 49 N. S. R. 289.—CAN.

PART VI. SECT. 1, SUB-SECT. 5.—C.

1275 i. Delivery up of records to suc-

cessor—Corporation books.]—A. was elected by the district council, treasurer of the district. When elected A. was himself a district councillor, & B. held the office of treasurer, having been long previously appointed by royal commission. B. refused to give A. the books of the office, upon the ground that A.'s election was bad. Upon application for a mandamus to B. to deliver over the books.—*Held*: although A.'s election was irregular, he, as treasurer *de facto*, had a legal right to the books, etc., of his office; & the mandamus might go.—*R. v. SMITH* (1848), 4 U. C. R. 322.—CAN.

1275 ii. ———.]—Unless the right of the relator to the papers is clear, a peremptory mandamus will not be ordered, but only an alternative writ.—*R. (PACAUD) v. DUBORD* (1885), 3 Man. L. R. 15.—CAN.

1275 iii. ——— To first council chosen—Second election invalid.]—*Re ASPHODEL TOWNSHIP & SARGENT* (1859), 17 U. C. R. 593.—CAN.

Sect. 1.—The prerogative writ: Sub-sect. 5, C. & D.]

parish books to their successors.—*R. v. STREET & STROUD* (1722), 8 Mod. Rep. 98; 88 E. R. 77.

1277. ————]—*ANON.* (1733), 2 Barn. K. B. 326; 94 E. R. 530.

1278. ————]—*Mandamus* will be granted to the old overseer of the poor to deliver the parish books to the new overseer.—*R. v. CLAPHAM* (1751), 1 Wils. 305; 95 E. R. 632.

1279. ————]—*A mandamus* against former assistant overseer, to deliver up rate books of the years he had remained in office, was moved for by the present overseers & churchwardens of the parish:—*Held*: he must make a return to the mandamus.—*R. v. Fox* (1838), 1 Will. Woll. & H. 4; 2 J. P. 120.

1280. *Delivery up of books on removal from office—Books of company.*—*A mandamus* was granted to the clerk of a co. to deliver books to the co., on his removal from office.—*R. v. WILDMAN* (1730), 2 Stra. 879; 93 E. R. 913.

1281. *Delivery up of inclosure award.*—*R. v. TALBOT* (1845), 9 J. P. Jo. 342.

1282. *Delivery up by person wrongfully in possession.*—Where a rectory is in fact void, although one has acted as rector & appointed an officiating chaplain, this ct. will not grant a mandamus, at the instance of one of the churchwardens, to compel a mere wrongdoer to give up the register books of the parish to the churchwardens as there is another remedy.

It seems that in this parish there is a person acting as rector, & how can his title be impeached by these proceedings, & if he were properly rector he is the proper custodian of these books, but if there be a vacancy, whereby the churchwardens are entitled to the custody of them then an action of detinue may, I think, be maintained by them (LORD CAMPBELL, C.J.).—*Ex p. HOLLOWAY* (1855), 24 L. T. O. S. 255; 19 J. P. Jo. 99; *sub nom.* *R. v. CUMLEY, Ex p. HOLLOWAY*, 3 W. R. 247.

1283. *Inspection—Accounts—Churchwardens.*—*R. v. CLEAR*, No. 1135, *ante*.

1284. ————]—Some special ground must be stated on which the inspection of churchwardens' books & accounts is required, in order to obtain a mandamus.—*R. v. DAVENTRY (CHURCHWARDENS)* (1859), 33 L. T. O. S. 134; 23 J. P. 709; 5 Jur. N. S. 940; 7 W. R. 445.

1285. ————]—*Limited company—Necessity to state object & scope of demand.*—Where a party applies for a mandamus to compel the directors of an incorporated co. to allow him to inspect their accounts, according to the directions of Cos. Clauses Consolidation Act, 1845 (c. 16), ss. 115 & 119, he must state what his object is & what the scope of his demand is, that the co. & the ct. may see that his demand is a reasonable one.—*R. v. LONDON & ST. KATHERINE DOCKS CO.* (1874), 44 L. J. Q. B. 4; 31 L. T. 588; 23 W. R. 136.

Annotations:—Reid. Davies v. Gaslight & Coke Co., [1909] 1 Ch. 248. Mend. Mutter v. Eastern & Midlands Ry. (1888), 38 Ch. D. 92.

1286. ————]—*District council.*—The ct. will not grant a mandamus requiring a district council to permit the inspection of accounts which have already been audited for some considerable

1280i. *Delivery up of books on removal from office—Books of court.*—*Mandamus* granted to clerk of a ct. of requests to give up books & papers of the ct., on being removed from office.—*Re LACROIX* (1836), 4 O. S. 339.—*CAN.*

a. Copy of bye-law—Without offer of fee.—*Mandamus* to a clerk of a

municipality to furnish a copy of a bye-law was refused, where it did not appear that the demand was accompanied by an offer of his fee.—*Re EUPHRASIA TOWNSHIP (CLERK)* (1855), 12 U. C. R. 622.—*CAN.*

1288i. *Inspection—Public documents.*—In proceedings for a mandamus, the

time, at the instance of a person who was entitled, under Public Health Act, 1875 (c. 55), s. 247 (4), as a person interested, to inspect such accounts, when deposited for inspection prior to audit, but who was at that time wrongfully refused access to the accounts, where it does not appear that appct. has any reason for supposing that by investigation of the accounts he would discover any right which he could enforce or any wrong in respect of which he could claim redress.—*R. v. FLEETWOOD URBAN DISTRICT COUNCIL* (1904), 68 J. P. 314; 2 L. G. R. 1209, D. C.

1287. ————]—*Voting papers—Election of poor law guardians.*—*R. v. BASINGSTOKE UNION GUARDIANS* (1851), 15 J. P. Jo. 67.

1288. ————]—*Public documents—Grounds for granting.*—The ct. has power in a proper case to enforce by writ of mandamus the production of public documents which the person who applies has a right to see & a *bona fide* ground for wishing to see.—*R. v. SOUTHWOLD CORPN., Ex p. WRIGHTSON* (1907), 97 L. T. 431; 71 J. P. 351; 5 L. G. R. 888, D. C.

1289. ————]—At the hearing of an appeal against an order of removal, appts., at the instance of resps., produced an assignment of the pauper as apprentice to a master in the applt. parish, but objected to its being given in evidence by resps., as it was not stamped. The ct. of quarter sessions respited the appeal, that resps. might apply to the Ct. of K. B. for a mandamus to appts. to produce the assignment to be stamped:—*Held*: the instrument was not a document of a public nature, & no mandamus would lie.—*R. v. WESTOWE (CHURCHWARDENS)* (1836), 5 Ad. & El. 786; 2 Har. & W. 446; 1 Nev. & P. K. B. 222; Nev. & P. M. C. 60; 111 E. R. 1364.

1290. ————]—*Records of court leet.*—A mandamus does not lie to allow the inspection of the records of a ct. leet unless the party assigns some satisfactory reason for the inspection.—*R. v. MAIDSTONE CORPN.* (1825), 6 Dow. & Ry. K. B. 334; 3 Dow. & Ry. M. C. 213.

Annotation:—Reid. R. v. Beaufort (1833), 2 Nev. & M. K. B. 815.

1291. *Production—Submission to arbitration—To be stamped.*—*Ex p. YATES* (1846), 10 J. P. Jo. 787.

Books & share register of companies.—*See COMPANIES.*

Documents of corporations.—*See CORPORATIONS*, Vol. XIII., pp. 302-305, 348, 349, 422-425, Nos. 336-370, 861-868, 876-879, 1423-1482.

Documents in hands of parish officers.—*See ECCLESIASTICAL LAW; POOR LAW.*

Court rolls.—*See COPYHOLDS*, Vol. XIII., pp. 37, 38, Nos. 419, 420, 423, 425, 426, 431, 437-439.

Register of Bank of England.—*See BANKERS & BANKING*, Vol. III., p. 133, Nos. 87, 88.

D. To enforce Statutory Rights and Duties.

1292. *General rule.*—Where a statute positively directs what shall be done in any case mandamus is then matter of right.—*R. v. MIDDLESEX JJ.* (1754), Say. 148; Dunning, 46; 96 E. R. 833.

Annotation:—Reid. Peart v. Westgarth (1765), 3 Burr. 1010.

1293. ————]—(1) If there is any neglect or refusal by a local board to perform their public

ct. will have less hesitation in ordering an inspection of the books of a public body than of the books of a private firm.—*WALLACE & FIORI HOSPITAL CONTRIBUTORS v. SOUTHLAND HOSPITAL & CHARITABLE AID BOARD* (No. 1) (1889), 8 N. Z. L. R. 250.—*N.Z.*

duties, the proper remedy is by an application for a mandamus to the Q. B. Div. in the exercise of its prerogative jurisdiction over all public bodies.

A mandamus might, on proper evidence of refusal, of which I see none here, be applied for in the Q. B. Div. in the exercise of its great prerogative jurisdiction to compel all bodies having an authority under an Act of Parliament to perform the duties the legislature have imposed on them (JAMES, L.J.).

(2) I think the mandamus spoken of in Jud. Act, 1873 (c. 66), s. 25 (8), is not the prerogative mandamus but only a mandamus which may be granted to direct the performance of something to be done which is the result of an action, where an action will lie (BRETT, L.J.).—GLOSSOP v. HESTON & ISLEWORTH LOCAL BOARD (1879), 12 Ch. D. 102; 49 L. J. Ch. 89; 40 L. T. 736; 44 J. P. 36; 28 W. R. 111, C. A.

Annotations :—As to (1) *Consd.* Leo District Board v. L. C. C. (1899), 82 L. T. 306. *Refd.* A.-G. v. Manchester (Dean & Canons) (1881), 18 Ch. D. 596. As to (2) *Refd.* R. v. St. George-the-Martyr Southwark Vestry (1892), 61 L. J. Q. B. 398. *Generally, Refd.* Warwick & Birmingham Canal Navigation Co. v. Burman (1890), 63 L. T. 670; R. v. St. Giles Camberwell Vestry (1897), 61 J. P. 217; Smith v. Chorley District Council, [1897] 1 Q. B. 532. *Mentd.* A.-G. v. Dorking Union (1882), 20 Ch. D. 595; Charles v. Finchley L. B. (1883), 23 Ch. D. 767; Holland v. Dickson (1888), 37 Ch. D. 669; R. v. Staines L. B. (1888), 60 L. T. 261; R. v. Parly (1889), 22 Q. B. D. 520; Atley v. Kirkheaton L. B. (1891), 60 L. J. Ch. 734; A.-G. v. Clerkenwell Vestry, [1891] 3 Ch. 527; Ogilvie v. Blything Union R. S. A. (1891), 65 L. T. 338; Cowley v. Newmarket L. B., [1892] A. C. 345; Yorkshire West Riding Council v. Holmfirth Urban S. A., [1894] 2 Q. B. 842; Dent v. Bournemouth Corp., (1897), 66 L. J. Q. B. 395; Durrant v. Branksome U. D. C. (1897), 76 L. T. 739; Robinson v. Worthington Corp., [1897] 1 Q. B. 619; Pasmore v. Oswaldtwistle U. D. C., [1898] A. C. 387; Harrington v. Derby Corp., [1905] 1 Ch. 205; Wincanton R. C. v. Parsons (1905), 74 L. J. K. B. 533; Foster v. Warlington District Council, [1906] 1 K. B. 648; Davies v. Gas Light & Coke Co., [1909] 1 Ch. 218; Dawson & Co. v. Bingley U. C., [1911] 2 K. B. 149; Jones v. Llanelwst U. C., [1911] 1 Ch. 393; McClelland v. Manchester Corp., [1912] 1 K. B. 118.

1294. Mandamus proper remedy—No other remedy available.—Whenever an Act of Parliament requires an act to be done, & it is not done, & there is no other remedy, we command it to be done, but there is no precedent for requiring by mandamus the undoing of an act (LORD CAMPBELL, C.J.).—*Ex p.* NASH (1850), 15 Q. B. 92; 19 L. J. Q. B. 293; 15 L. T. O. S. 111; 117 E. R. 393; *sub nom.* *Re* WATERFORD, WEXFORD, WICKLOW & DUBLIN RY. CO., *Ex p.* NASH, 14 Jur. 574.

1295. ——. *—Ex p.* HUNTER (1850), 23 J. P. Jo. 372.

Whether absence of alternative remedy condition precedent to issue of mandamus, *see* Subsect. 3, *F.*, *ante*.

1296. ——. **Not specific performance.**—Negotiations were entered into for the purchase of a canal by a railway co. In pursuance of these negotiations an Act was obtained, enacting that it should be lawful for the canal co. to sell to the railway co. & the railway co. "were authorised & required with the consent of three-fifths of the shareholders to purchase the canal." A resolution was passed authorising the directors to complete the purchase at such time & under such terms & conditions as to them should seem meet. No steps were taken by the directors to complete the purchase:—*Held*: there being no contract signed by two directors under the corporate seal, so as to comply with the provisions of Cos. Clauses Consolidation Act, 1845 (c. 16), specific performance could not be decreed.

Semble: in such a case the canal proprietors should have applied for a mandamus to compel the railway co. to complete the purchase upon the terms specified.—LEOMINSTER CANAL NAVIGATION CO. v. SHIREWSBURY & HEREFORD RY. CO. (1857), 3 K. & J. 654; 26 L. J. Ch. 761; 29 L. T. O. S. 342; 3 Jur. N. S. 930; 5 W. R. 808; 69 E. R. 1272.

Annotation :—*Mentd.* Bateman v. Mid-Wales Rty. (1866), 14 W. R. 672

1297. ——. **Not injunction—Condition subsequent.**—The erection of new public stairs in the place of those obstructed, as provided by Thames Conservancy Act, 1857 (c. cxlvii.), s. 62, is a condition subsequent, & enforceable by writ of mandamus, & not by injunction.—A.-G. v. THAMES CONSERVATORS (1862), 1 Hem. & M. 1; 1 New Rep. 121; 71 E. R. 1; *subsequent proceedings* (1863), 3 De G. J. & Sm. 431, L. C.

Annotations :—*Mentd.* A.-G. v. Metropolitan Board of Works (1863), 1 Hem. & M. 298; Thames Conservators v. S. E. Rty. (1871), 24 L. T. 246; Lyon v. Fishmongers' Co. (1876), 1 App. Cas. 662; Bell v. Quebec Corp., (1879), 5 App. Cas. 84; Fritz v. Hobson (1880), 14 Ch. D. 542; Vernon v. St. James, Westminster Vestry (1880), 16 Ch. D. 449; Horner v. Whitechapel Board of Works (1885), 55 L. J. Ch. 289; Chaplin v. Westminster Corp., [1901] 2 Ch. 329.

1298. ——. **New right created by statute.**—Where a new right has been created by Act of Parliament the proper mode of enforcing it is by mandamus at common law.—SIMPSON v. SCOTTS' UNION INSURANCE CO. (1863), 1 Hem. & M. 618; 1 New Rep. 537; 32 L. J. Ch. 329; 8 L. T. 112; 9 Jur. N. S. 711; 11 W. R. 459; 71 E. R. 270.

Annotations :—*Mentd.* Coward v. Gregory (1866), L. R. 2 C. P. 153; Castellain v. Preston (1883), 11 Q. B. D. 380; Sun Insee. Office v. Galinsky, [1914] 2 K. B. 545; Matthey v. Curling, [1922] 2 A. C. 180.

1299. For jury to assess compensation—Damage partly under compulsory powers.—Under a Railway Act, which gave power to divert rivers, water-courses, etc., a co. had raised the level of a brook, into which the sough of a coal mine had been accustomed to empty itself, & thereby caused the water of the brook to flow into the sough, & inundate & stop the coal works. Upon the owner of them applying for a mandamus for a jury to ascertain & compensate him for the injury done to his works by such diverting of the brook, which was opposed by the co. on the ground, that on claimant's remonstrance they had restored the brook to its former level, & that no damage had been done by the alteration, such stoppages having been frequently caused by floods before:—*Held*: (1) it was a question for a jury whether any damage had been done to claimant, & his alleging that he was injured by the diverting, i.e. altering the level, of the brook, was sufficient to induce the ct. to grant a mandamus; (2) if damage was done partly under the powers of a statute & partly not, a mandamus & not an action at law was the proper remedy for such lawful acts.

(3) After the sufficiency of a return to a mandamus has been decided on *concilium*, any material fact in it may be traversed.—R. v. NORTH MIDLAND RY. CO. (1840), 2 Ry. & Can. Cas. 1; *subsequent proceedings*, 11 Ad. & El. 955, n.

1300. ——. *—*Where an Act of Parliament constituting a co. entitles individuals to compensation for damages sustained by reason of the works authorised by the Act, the ct. will issue a mandamus to the co. to cause a jury to be summoned.—R. v. EASTERN COUNTIES RY. CO. (1840), 5 Jur. 365.

*—*See COMPULSORY PURCHASE OF LAND

PART VI. SECT. 1, SUB-SECT. 5.—D.

1294 i. Mandamus proper remedy.—The prerogative writ of mandamus is the proper remedy to enforce a statutory duty.—R. v. GLENELG RY. CO., LTD., [1899] S. A. L. R. 77.—AUS.

Sect. 1.—The prerogative writ: Sub-sect. 5, D., E., F. & G.]

& COMPENSATION, Vol. XI., pp. 206, 207, 210, Nos. 842-862, 928.

To compel payment of purchase money into court.]—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., pp. 233, 234, Nos. 1222, 1235.

To take up award in proceedings for compulsory purchase.]—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., pp. 195, 199, Nos. 745-752, 787.

1301. To complete railway—Application by shareholder.]—A motion for a mandamus to a railway co. to carry out their line, which it is alleged they are leaving incomplete by laches, may be grounded on a demand made by a shareholder in the co. itself.—*R. v. AMBERGATE, ETC. RY. CO. (1851)*, 17 Q. B. 362; 15 Jur. 991; 117 E. R. 1318.

1302. —.]—When a railway co. avail themselves of extraordinary powers conferred upon them at their own solicitation, & on their own representations that the projected railway will be of public benefit, by getting possession of lands without the consent of the owners, & beginning the formation of the railway there is a duty incumbent upon them to complete the undertaking; & the ct. will compel the performance of that duty by a mandamus at the instance of the landowner.—*R. v. LANCASHIRE & YORKSHIRE RY. CO. (1852)*, 1 E. & B. 228; 7 Ry. & Can. Cas. 266; 22 L. J. Q. B. 57; 20 L. T. O. S. 169; 17 Jur. 62; 1 W. R. 35; 118 E. R. 425; *reusd. sub nom. LANCASHIRE & YORKSHIRE RY. CO. v. R. (1853)*, 1 E. & B. 873, n., Ex. Ch.

Annotations:—Consd. York & North Midland Ry. v. R. (1853), 1 E. & B. 858. *Refd. R. v. Ambergate Ry. (1853)*, 20 L. T. O. S. 216.

— When statute imposing no legal duty.]—See Sub-sect. 3, B. (a), ante.

See, generally, RAILWAYS & CANALS.

1303. To carry out public general statute—Regulating scientific society.]—A writ of mandamus will issue compelling a scientific society to carry out the provisions of a public general statute by which it is regulated.—*R. v. PHARMACEUTICAL SOCIETY (1854)*, 2 W. R. 220.

E. Compelling Public Officials and Bodies to carry out Duties.

1304. General rule—On refusal to perform public duty.]—The question raised is, whether, when a person entitled to have compensation made to him under the provisions of Public Health Act, 1848 (c. 63), applies to a Local Board for compensation, & is met with a denial of their liability, it is a proper case for a mandamus. *Prima facie*, a mandamus is the proper remedy, the object being to compel a public body to perform a public duty (WILLIAMS, J.).—*R. v. BURSLEM LOCAL BOARD OF HEALTH (1860)*, 1 E. & E. 1088; 29 L. J. Q. B. 242; 2 L. T. 667; 24 J. P. 563; 6 Jur. N. S. 676; 8 W. R. 584; 120 E. R. 1218, Ex. Ch.

Annotation:—Mentd. Brierley Hill L. B. v. Pearsall (1884), 9 App. Cas. 595.

1305. —.]—GLOSSOP v. HESTON & ISLEWORTH LOCAL BOARD, No. 1293, ante.

PART VI. SECT. 1, SUB-SECT. 5.—E.

1304 i. General rule—On neglect to perform public duty.]—Mandamus is the proper means to compel performance by a public body of a public duty, where such remedy is the most convenient, beneficial & effectual open.—*STOWELL v. GERALDINE COUNTY COUNCIL (1890)*, 8 N. Z. L. R. 720.

—N.Z.

b. City surveyor—To consider place.]—*R. v. PULLAR, Ex p. FLEMINGTON MEAT PRESERVING CO. PROPRIETARY, LTD., (1916)* V. L. R. 24.—AUS.

c. Sheriff—Refusing to act.]—Where a sheriff, duly appointed, refused to act or take oath of office, the appro-

1306. —.]—I am of opinion that the case falls within the class of cases where officials having a public duty to perform, & having refused to perform it, mandamus will lie on the application of a person interested to compel them to do so (LORD ESHER, M.R.).—*R. v. INCOME TAX SPECIAL PURPOSES COMRS. (1888)*, 21 Q. B. D. 313; 53 J. P. 84; 36 W. R. 776; 4 T. L. R. 636; *sub nom. R. v. INCOME TAX SPECIAL COMRS., Ex p. CAPE COPPER MINING CO., LTD., 57 L. J. Q. B. 513; 59 L. T. 455; 2 Tax Cas. 332, C. A.*

Annotations:—Consd. R. v. Income Tax Special Comrs., Ex p. Dr. Barnardo's Homes National Incorporated Assocn. (1920) 1 K. B. 26. *Mentd. Russell v. North of Scotland Bank (1891)*, 3 Tax Cas. 14; *Furtado v. City of London Brewery Co. (1913)*, 83 L. J. K. B. 255; *R. v. Bloomsbury Income Tax Comrs., (1915)* 3 K. B. 768; *L. C. C. v. Galsworthy (1917)*, 116 L. T. 528; *R. v. Board of Trade, Ex p. Derry (1917)*, 33 T. L. R. 316; *R. v. Nat Bell Liquors, (1922)* 2 A. C. 128.

1307. —.]—*R. v. STEPNEY CORPN., No. 1049, ante.*

1308. — Not to do particular works—Local authority.]—No mandamus will lie against a local authority to do any particular works.—*A.-G. v. STAFFORDSHIRE COUNTY COUNCIL, (1905)* 1 Ch. 336; 74 L. J. Ch. 153; 92 L. T. 288; 69 J. P. 97; 53 W. R. 312; 21 T. L. R. 139; 3 L. G. R. 379.

Annotation:—Mentd. Wednesbury Corpn. v. Lodge Holes Colliery Co., (1907) 1 K. B. 78.

1309. Borough treasurer—To pay expenses of prosecution—Ordered by judge of assize.]—Three persons were indicted at the assizes for the county of S. for forging the will of D. It appeared that D. died in the borough of O, & that one of the prisoners took away the deeds, etc., of deceased to his own house, which was in the county of S., but not in the borough of O, that the forged signatures of testatrix & of one of the witnesses were written in the borough of O, & that the offence was completed in the county of D., where the forged signature of the second witness was written. The borough of O. did not contribute to the county rate, but had a borough fund of its own:—*Held*: a mandamus would lie to the treasurer of the borough of O. to compel payment of all costs & expenses of the prosecution.—*R. v. OSWESTRY (TREASURER) (1848)*, 12 Q. B. 239; 11 L. T. O. S. 198; 12 Jur. 744; 12 J. P. Jo. 373; 116 E. R. 858; *sub nom. R. v. HAYWARD*, 17 L. J. Q. B. 223.

1310. Officer vacating office—Duty of successor to obey.]—A mandamus was directed to the mayor & assessors of R., a borough within Municipal Corpn. Act, 1835 (c. 76), which comprised several parishes. It contained suggestions that, at the ct. holden in Oct. 1856, before the mayor & assessors for the revision of the Burgess lists of that year, the mayor & assessors refused, for insufficient reasons, to revise the lists. The mandatory part commanded the mayor & assessors to hold a ct. & revise the list for the parish. The writ was tested in Jan. 1857. There was an insufficient return, & a demurrer thereto. The Ct. of Q. B. having awarded a peremptory mandamus:—*Held*: the mandamus was properly directed to the existing mayor & assessors to hold the ct., & revise the list of the past year.—*ROCHESTER CORPN. v. R. (1858)*, E. B. & E. 1024; 27 L. J. Q. B. 434; 4 Jur. N. S. 1227; 120 E. R. 791;

private remedy is by information ex officio or indictment, & mandamus will not be granted.—R. v. HUTCHINSON (1893), 32 L. R. Ir. 142.—IR.

d. Town clerk—Publication of objections to voters list.]—Where a town clerk failed to publish a list of the persons objected to on the voters list the ct. granted mandamus to

sub nom. **R. v. ROCHESTER CORPN., Re ST. MARGARET & ST. NICHOLAS PARISHES**, 32 L. T. O. S. 81; 22 J. P. 608; 6 W. R. 838, Ex. Ch.; *affg.* S. C. *sub nom.* **R. v. ROCHESTER CORPN.** (1857), 7 E. & B. 910.

Annotations.—*Consd.* **Hunt v. Hibbs** (1860), 5 H. & N. 123; *Scott v. Durant* (1865), 18 C. B. N. S. 205. **Expld. & Apd.** **R. v. Hanley** Revising Barrister, **R. v. Stoke-on-Trent Town Clerk**, [1912] 3 K. B. 518. **Refd.** **Seal v. R.** (1857), 27 L. J. Q. B. 139; **R. v. North Bierley Overseers** (1858), E. B. & E. 519; **R. v. Monmouth Corpn.**, **R. v. Bolton Corpn.** (1870), L. R. 5 Q. B. 251; **R. v. Allen** (1873), L. R. 8 Q. B. 69; **R. v. Farquhar** (1874), L. R. 9 Q. B. 268; **Henry v. Armitage** (1882), 48 L. T. 578; **Ex p. Keay** (1891), 56 J. P. 470. **Mentd.** **Christopherson v. Lotinga** (1864), 15 C. B. N. S. 809.

1811. Mayor & assessors of borough—To revise **burgess list.**—The mayor & assessors of a borough, at a ct. for the revision of the burgess list, holden between Oct. 1 & 15, the time limited by Municipal Corpn. Act, 1835 (c. 76), s. 18, erroneously determined that certain notices of objection were invalid, & refused to inquire into the qualifications of the persons objected to:—**Held**: the mayor & assessors had declined jurisdiction, & a mandamus would be granted commanding them to hold a ct. to revise the list, although the time limited had elapsed.—**R. v. MONMOUTH CORPN.**, **R. v. BOLTON CORPN.** (1870), L. R. 5 Q. B. 251; 39 L. J. Q. B. 77; 21 L. T. 748; 34 J. P. 566.

Attorney-General—To grant flat.—*See* CONSTITUTIONAL LAW, Vol. XI., p. 512, Nos. 129, 130.

Board of Trade—To order rehearing under **Shipping Casualties Investigations Act, 1879** (c. 72), s. 2.—*See* ADMIRALTY, Vol. I., p. 233, No. 1597.

Burial boards.—*See* BURIAL & CREMATION, Vol. VII., pp. 542, 544, 547, Nos. 221, 233–235, 263. **Churchwardens.**—*See* ECCLESIASTICAL LAW; RATES & RATING.

Commissioners of Customs.—*See* No. 1157, *ante*.

Commissioners of Excise.—*See* No. 1178, *ante*.

Commissioners of Income Tax.—*See* No. 1306, *ante*.

Commissioners of Inland Revenue.—*See* No. 894, *ante*.

Commissioners of Sewers.—*See* SEWERS & DRAINS.

Commissioners of Stamps & Taxes.—*See* No. 1179, *ante*.

Commissioners of Woods & Forests.—*See* Nos. 1176, 1177, *ante*; **COMPULSORY PURCHASE OF LAND & COMPENSATION**, Vol. XI., p. 206, No. 852.

Education authorities.—*See* EDUCATION.

Guardians of the poor.—*See* POOR LAW.

Local Government Board.—*See* LOCAL GOVERNMENT; POOR LAW.

Lords of Admiralty.—*See* No. 1163, *ante*.

Lords of Treasury.—*See* Nos. 1164–1171, *ante*.

Overseers.—*See* BURIAL & CREMATION, Vol. VII., p. 522, No. 13; POOR LAW.

Postmaster-General.—*See* TELEGRAPHS & TELEPHONES.

Whether writ will issue to Crown & Crown servants.—*See* Sub-sect. 4, A., *ante*.

Registrar of Companies.—*See* COMPANIES.

Registration officers—Under **Representation of the People Act, 1918** (c. 64).—*See* ELECTIONS.

compel him so to do.—**R. v. KINGSTOWN COMBS.** (1885), 18 L. R. Ir. 179.—IR.

e. Registrar of titles—To register mortgage.—**PERPETUAL EXECUTORS & TRUSTEES ASSON. v. HOSKEN** (1912), 14 C. L. R. 286.—AUS.

f. Registrar under Mining Act, 1891.—If a mining registrar under above Act refuses to note & enter

dates & times on which applications are received by him, the remedy is mandamus.—**PARKER v. BROOKS** (1897), 16 N. Z. L. R. 276.—N.Z.

PART VI. SECT. 1, SUB-SECT. 5.—G.

g. Election proceedings—Contested election trial.—A mandamus may be granted to a municipal corpn. to proceed in the trial of a contested

F. Making & Levying of Rates.

See RATES & RATING.

Actions of mandamus to.—*See* Nos. 1331–1335, *post*.

Interlocutory mandamus.—*See* No. 1341, *post*.

G. Other Purposes.

Administration of Inns of Court & Chancery.—*See* BARRISTERS, Vol. III., pp. 315, 316, Nos. 8, 13, 16, 17.

Admission of copyholders.—*See* COPYHOLDS, Vol. XIII., pp. 106, 119, 129, 135, 136, Nos. 1346, 1347, 1349–1354, 1499, 1607, 1696–1708.

Admission of lecturer to use of pulpit.—*See* ECCLESIASTICAL LAW.

1312. Affixing seal of college.—A mandamus lies to the Provost of a college to compel him to affix the college seal to a presentation by the college.—**R. v. BLAND** (1740), 7 Mod. Rep. 355; 2 Burn's Eccles. Law, 9th ed., p. 116; 87 E. R. 1287.

Annotations.—*Consd.* **R. v. Orton Trustees** (1849), 14 Q. B. 139. **Refd.** **R. v. Cambridge** (Vice-Chancellor) (1765), 3 Burr. 1647; **R. v. Kendall** (1841), 1 Q. B. 366.

Affixing & removal of corporate seal.—*See* CHARITIES, Vol. VIII., p. 368, No. 1742; CORPORATIONS, Vol. XIII., p. 288, 289, Nos. 189–192, 202.

Altering voters' roll of corporation.—*See* CORPORATIONS, Vol. XIII., p. 347, Nos. 851, 852.

Appointment of arbitrators under 9 Geo. 4, c. 92.—*See* BANKERS & BANKING, Vol. III., pp. 135–137, Nos. 100, 106, 108–110.

1313. Election proceedings—Revision of.—A vicar presiding at a poll for church rates may, if he pleases, call in an assessor to assist him in deciding upon the objections taken to the votes. Where, however, he decided them himself, believing that he could afterwards have their legality examined by scrutators, & this mistake was also made by the opposite parties, the ct. refused a mandamus to adjourn the poll & reconsider the votes so given because there was no reason to suppose that he would decide differently.

We hope we shall not be understood as entertaining any doubt of our right to revise all common law proceedings in the nature of an election, & to see that they are fairly conducted, & the conclusion properly arrived at. We feel no doubt but that we have such power. The question is, whether this is a case for exercising it (*per Cur.*).—**R. v. WAKEFIELD (VICAR)** (1846), 7 L. T. O. S. 227; 10 J. P. Jo. 386.

Enforcement of meetings of corporation.—*See* CORPORATIONS, Vol. XIII., p. 341, Nos. 795, 796.

Enforcement of payment of arrears of pension by police authority.—*See* POLICE.

Enforcement of payment of salary or compensation to corporate officers.—*See* LOCAL GOVERNMENT.

1314. Enforcement of process of inferior tribunal.—**R. v. CONYERS**, No. 1021, *ante*.

1315. — Poor Law Commissioners.—*Semble*: (LORD DENMAN, C.J.) if an order of the Poor Law Comrs. be on a subject-matter within their general jurisdiction its legality in other respects can be questioned only on removal by *certiorari* & in

election.—**Re DENHAM & TORONTO CITY** (1835), 3 O. S. 605.—CAN.

h. Enforcement of proof of execution of deed.—A mandamus will lie to compel a witness to prove the execution of a deed & memorial for registry.—**R. v. O'MEARA** (1857), 15 U. C. R. 201.—CAN.

k. To allow special items in audited accounts.—Where quarter sessions have

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default of such removal a mandamus will go to enforce it.—*R. v. OLDHAM UNION OVERSEERS* (1847), 10 Q. B. 700; 16 L. J. M. C. 110; 9 L. T. O. S. 197; 11 Jur. 487; 11 J. P. Jo. 404; 116 E. R. 266.

1316. — *Order of justices.*—*Ex p. OLD HUTTON OVERSEERS* (1851), 15 J. P. Jo. 113.

1317. — *Against committee of visitors.*—A committee, who were elected annually from among the justices of a county, were authorised by 8 & 9 Vict. c. 126, s. 17 to make certain contracts, & by sect. 16, they might be sued in the name of their clerk:—*Held*: an action was maintainable against the committee for the time being in the name of their clerk, upon a contract entered into by a former committee within the scope of their authority.

Semble: plffs. remedy to enforce their judgment would be by bill in equity or mandamus.—*KENDALL v. KING* (1856), 17 C. B. 483; 25 L. J. C. P. 132; 20 J. P. 246; 4 W. R. 389; 139 E. R. 1163.

Annotations:—*Reid. Bush v. Beavan* (1862), 1 H. & C. 500. *Mentl. Hall v. Taylor* (1858), E. B. & E. 107; *Itchen Bridge Co. v. Southampton L. B. of Health* (1858), 6 W. R. 223; *Ward v. Lowndes* (1859), 5 Jur. N. S. 1124; *Coe v. Wise* (1864), 5 B. & S. 440.

1318. *Entry of probate of will of deceased shareholder.—Upon books of canal company.*—The Ct. of K. B. will grant a mandamus to a canal co. to enter upon their books the probate of the will of a deceased shareholder, leaving any question as to the validity and effect of the probate to be raised by a return to the writ.—*R. v. WORCESTER & BIRMINGHAM CANAL NAVIGATION CO. & HODGKINSON* (1828), 1 Man. & Ry. K. B. 529; 1 Man. & Ry. M. C. 195; 6 L. J. O. S. K. B. 173.

See, generally, RAILWAYS & CANALS.

Enforcement of repairs of highways by local authorities.—*See HIGHWAYS, STREETS & BRIDGES.*

Enforcement of rights of members against corporation.—*See CORPORATIONS*, Vol. XIII., p. 301, Nos. 330–334.

Enforcement of service in municipal office.—*See LOCAL GOVERNMENT.*

Enforcing burial.—*See BURIAL & CREMATION*, Vol. VII., p. 528, Nos. 81, 82.

Enforcing holding of courts by corporation.—*See COURTS*, p. 127, Nos. 253–255, *ante*.

In legal proceedings by or against corporations.—*See CORPORATIONS*, Vol. XIII., pp. 419, 420, Nos. 1394–1403.

Insertion of name on burgess roll.—*See LOCAL GOVERNMENT.*

1319. *Payment of unascertained costs—Order by judge at trial.*—Where justices have directed an indictment against a parish, under Highway Act, 1835 (c. 50), s. 95, for non-repair of a highway, & the judge of assize directs payment of the costs out of the parish highway rate, he must ascertain the amount of costs, & order payment of the sum so ascertained. Where the judge's order is only to pay the costs generally, this ct. cannot enforce such an order by mandamus.—*R. v. CLARK* (1844), 5 Q. B. 887; 1 Dav. & Mer. 687; 13 L. J. M. C. 91; 8 J. P. 837; 8 Jur. 489; 114 E. R. 1483;

sub nom. R. v. CHIPPING BARNET (INHABITANTS), 3 L. T. O. S. 55.

Annotations:—*Consd. R. v. Eard Island* (1854), 3 E. & B. 960. *Reid. R. v. Oswestry Treasurer* (1848), 12 Q. B. 239.

Proposal of resolutions at corporate meeting.—*See CORPORATIONS*, Vol. XIII., p. 338, No. 771.

1320. *Recovery of money paid under mistake of law.—By borough council.*—In pursuance of a resolution passed by the watch committee of a borough incorporated under Municipal Corpsns. Act, 1835 (c. 76), the justices of the county provided police for the borough from 1869 to 1887. By Municipal Corpsns. Act, 1835 (c. 76), the watch committee were required to appoint police for the borough, & on June 30, 1887, they withdrew the county police & appointed borough constables. At this date the county justices had in their hands a sum arising from a rate levied on the borough applicable for the future expenses of the police in the division in which the borough was situate. In an action by the mayor & corpns. against the council of the county as successors of the county justices, to recover the amount overpaid by the borough:—*Held*: the remedy against defts., if any, was by mandamus.—*BOOTLE-CUM-LINACRE CORPN. v. LANCASHIRE COUNTY COUNCIL* (1890), 60 L. J. Q. B. 323; 7 T. L. R. 179, C. A.

Registration of shares.—*See COMPANIES.*

SECT. 2.—ACTIONS OF MANDAMUS.

See R. S. C., Ord. 53.

Mandatory injunctions.—*See INJUNCTION.*

1321. *Nature of remedy.*—*GLOSSOP v. HESTON & ISLEWORTH LOCAL BOARD*, No. 1293, *ante*.

1322. — *R. v. LAMBOURN VALLEY RY. CO.*, No. 1044, *ante*.

1323. — *The action for a mandamus is simply an attempt to engraft upon the old common law remedy a right in the nature of specific performance* (DAY, J.).—*BAXTER v. LONDON COUNTY COUNCIL* (1890), 63 L. T. 767; 55 J. P. 391; 7 T. L. R. 142.

Annotations:—*Consd. Smith v. Chorley District Council*, [1897] 1 Q. B. 532; *Davies v. Gas Light & Coke Co.*, [1909] 1 Ch. 218.

1324. — *R. v. WILTS & BERKS CANAL CO.*, No. 1082, *ante*.

1325. *Jurisdiction of Court of Chancery—Apart from statute.*—It is said that the writ is indorsed for a mandamus, & we are asked to say that this can only be supported if it was an action for a mandamus under the O. L. P. Act, 1854 (c. 125). I entirely decline to read it in that way. I think, with the facts before him, the judge was bound to give the relief which he did give, which was a relief well established in the old Ct. of Ch., & consistent, in my view, with the plain language of s. 10 [of Cos. Clauses Consolidation Act, 1845 (c. 16)] (*COZENS-HARDY, M.R.*).—*DAVIES v. GAS LIGHT & COKE CO.*, [1909] 1 Ch. 708; 78 L. J. Ch. 445; 100 L. T. 553; 25 T. L. R. 428; 53 Sol. Jo. 399; 10 Mans. 147, C. A.

1326. *When action lies—Where prerogative writ would issue—Not to decree specific performance of*

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n. When action lies—Not where discretion given & exercised.—*SMITH v. WATSON* (1906), 4 C. L. R. 802.—*AUS.*

1326 i. — *Where prerogative writ would issue—Not to decree specific performance of contract.*—*CARR v. CANADIAN NORTHERN RY. CO.* (1907), 6 W. L. R. 720; 17 Man. L. R. 178.—*CAN.*

audited accounts of a clerk of the peace, the ct. will not interfere by mandamus to compel the allowance of particular items.—*Re DARTNELL* (1867), 26 U. C. R. 430.—*CAN.*

1. — *Re FENTON & YORK COUNTY BOARD OF AUDIT* (1880), 31 C. P. 31.—*CAN.*

m. To remove names from electoral

roll.—A ct. of revision allowed five names, representatives of a co., to remain on the electoral roll instead of one:—*Held*: a mandamus would be directed to the clerk in whose custody the roll was to expunge the four contested names from the roll.—*R. v. NORTH SAATCHI MUNICIPAL COUNCIL* (1910), 12 W. L. R. 639; 15 B. C. R. 1.—*CAN.*

contract.]—On demurrer to a declaration claiming a writ of mandamus to enforce the execution of a lease from pltf. to deft., in fulfilment of a contract between them:—*Held*: the declaration was bad, as C. L. P. Act, 1854 (c. 125), s. 68, applied only to the fulfilment of such duties as might be enforced by the prerogative writ of mandamus, & not to the specific performance of contracts.—*BENSON v. PAULL* (1856), 6 E. & B. 273; 25 L. J. Q. B. 274; 27 L. T. O. S. 78; 2 Jur. N. S. 425; 4 W. R. 493; 119 E. R. 865.

Annotations:—*Distd. Norris v. Irish Land Co.* (1857), 8 E. & B. 512. *Refd. Bush v. Beavan* (1862), 1 H. & C. 500.

1327. — — — — —.]—A co. was incorporated by Royal charter, which required that provision should be made in the deed of settlement for the due registration of shareholders. The deed accordingly provided that the personal representatives of a deceased shareholder should be entitled to be registered as the owners of the deceased's shares on performing certain conditions. Pltf., being the administrator of a deceased shareholder, & having performed the conditions, brought an action for damages against the co. for not registering him as a shareholder, & also claimed in his declaration, under C. L. P. Act, 1854 (c. 125), s. 68, a mandamus to the co. to register him:—*Held*: this was a case in which before the Act, a mandamus would have been granted, & pltf. was therefore entitled to claim it under the Act.

C. L. P. Act, 1854 (c. 125), did not intend to give a ct. of common law power to decree specific performance of a private contract; & where the duty to be enforced by mandamus arises purely from a personal contract to grant a mandamus would in effect be to decree specific performance (*LORD CAMPBELL, C.J.*).—*NORRIS v. IRISH LAND CO.* (1857), 8 E. & B. 512; 27 L. J. Q. B. 115; 30 L. T. O. S. 132; 4 Jur. N. S. 235; 6 W. R. 55; 120 E. R. 191.

Annotations:—*Consd. Fotherby v. Met. Ry.* (1866), 36 L. J. C. P. 88. *Refd. Bush v. Beavan* (1862), 1 H. & C. 500. *Mentd. R. v. Wigan* (1874), L. R. 9 Q. B. 317.

1328. — — — — —.]—Not where alternative remedy available—By action.]—The action of mandamus, like the writ of mandamus, does not lie where there is any other remedy.—*BUSH v. BEAVAN* (1862), 1 H. & C. 500; 32 L. J. Ex. 54; 7 L. T. 106; 8 Jur. N. S. 1015; 10 W. R. 845; 158 E. R. 982.

Annotations:—*Refd. Morgan v. Met. Ry.* (1868), L. R. 4 C. P. 97; *Peebles v. Oswaldtwistle U. D. C.*, [1897] 1 Q. B. 384. *Mentd. Bush v. Martin* (1863), 9 L. T. 510.

1329. — — — — —.]—Public Health Act, 1875 (c. 55), s. 299.]—*PASMORE v. OSWALDTWISTLE URBAN COUNCIL*, No. 1150, *ante*.

Whether prerogative writ available where action of mandamus proper remedy, *see* Sub-sect. 3, F. (b), ii., *ante*.

1330. — — — — —.]—No actual damage sustained.]—An action for a mandamus may lie even when no actual damage has been sustained.—*FOTHERBY v. METROPOLITAN RY. CO.* (1866), L. R. 2 C. P. 188; 36 L. J. C. P. 88; 15 L. T. 243; 12 Jur. N. S. 1005; *sub nom. FETHERBY v. METROPOLITAN RY. CO.*, 15 W. R. 112.

Annotation:—*Refd. Morgan v. Met. Ry.* (1868), L. R. 4 C. P. 97.

1326 ii. — — — — —.]—Statutory duty to be performed.]—*NOBLE v. ESQUENING TOWNSHIP* (1918), 41 O. L. R. 400.—*CAN.*

1326 iii. — — — — —.]—HUDSON & HARDY v. BIDDULPH TOWNSHIP (1920), 46 O. L. R. 216.—*CAN.*

o. — — — — —.]—Legal right must be in applicant.]—The owner of lots covered
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by water brought an action for a mandamus to compel defts., to remove obstructions. He failed to prove riparian proprietorship:—*Held*: the action must be dismissed.—*MERRITT v. TORONTO CITY* (1912), 22 O. W. R. 710; 3 O. W. N. 1550; 27 O. L. R. 1; 6 D. L. R. 152.—*CAN.*

1328 i. — — — — —.]—Not where alternative

1331. — — — — —.]—To levy rates retrospectively—Though action not begun within six months—Public Health Act, 1848 (c. 63), s. 89.]—Comrs. under Tunstall Improvement Act, 1847 (c. cclii.), became indebted to pltf. for work, labour, etc., between 1848 & 1853. Whilst the debt was owing the General Board of Health published a provisional order, which was confirmed by the Public Health Supplemental Act, 1855 (c. 125), by which order the above Act was applied to Tunstall, the powers of the improvement comrs. ceased, & their property, etc., was transferred to the Tunstall Local Board of Health; & it was ordered that debts contracted by the comrs. should be satisfied by the local board out of such parts of the transferred property as would have been chargeable therewith if such order had not been made, & should be paid by the local board as by the comrs., provided that if such property was insufficient, the deficiency should be charged upon the rates leviable under the above Act. Pltf. brought this action more than six years after the debt accrued, & claimed a writ of mandamus to levy a rate for the payment of the debt:—*Held*: (1) a plea of Stat. Limitations was bad, as being no bar to the claim for a mandamus; (2) a plea, founded on the above sect., which stated that the cause of claim for the writ did not accrue within six months before action brought, & that the debts were not a charge or expense incurred by the local board within six months before writ, or within six months before demand of the rate, was bad.—*WARD v. LOWNDES* (1859), 1 E. & E. 940; 29 L. J. Q. B. 40; 1 L. T. 268; 24 J. P. 228; 6 Jur. N. S. 247; 8 W. R. 81; 120 E. R. 1163, Ex. Ch.

Annotations:—*As to* (2) *Refd. Bush v. Beavan* (1862), 1 H. & C. 500. *Generally, Mentd. Smith v. Chorley District Council*, [1897] 1 Q. B. 532; *R. v. Marshland Smeth & Fen District Comrs.*, [1920] 1 K. B. 155.

1332. — — — — —.]—Pltf. sustained damage from the construction of works by a local board of health & made a claim for compensation. He afterwards obtained a rule for a mandamus commanding the board to make compensation. Arbitrators having been appointed under s. 123 of the above Act, an umpire was after some delay appointed who subsequently made his award in favour of pltf. In an action upon the award:—*Held*: pltf. was entitled to a mandamus under the C. L. P. Act, 1854 (c. 125), commanding the board to make & levy a rate to satisfy the amount of the award & the costs of the reference, although the six months limited by sect. 89 of the above Act, for the making of retrospective rates had elapsed since the damage was done, the action having been commenced within six months after the making of the award, & it not appearing that pltf. had been guilty of any laches.—*RINGLAND v. LOWNDES* (1863), 15 C. B. N. S. 173; 33 L. J. C. P. 25; 9 L. T. 479; 10 Jur. N. S. 48; 12 W. R. 168; 143 E. R. 749; *sub nom. KINGSLAND v. LOWNDES*, 3 New Rep. 84; *reversd.* on other grounds (1864), 17 C. B. N. S. 524, Ex. Ch.

Annotations:—*Mentd. Davies v. Price* (1864), 11 L. T. 203; *Bolles v. Brockner* (1889), 6 T. L. R. 85.

1333. — — — — —.]—Inasmuch as a judgment properly obtained is a charge within sect. 89 of the above Act a mandamus lies to a

remedy available—Prerogative writ of mandamus.]—The weight of judicial opinion is against the right to invoke the remedy of the prerogative writ in an action; & where the appropriate remedy would be that writ, the mandatory order issuable in an action is not proper.—*HUDSON & HARDY v. BIDDULPH TOWNSHIP* (1920), 46 O. L. R. 216.—*CAN.*

SECT. 5.—ORDERS IN NATURE OF MANDAMUS.

1343. When granted.—Not when alternative remedy available.]—SAYERS v. MASSON SCOTT & Co. (1905), 49 Sol. Jo. 237, D. O.

1344. To county court.—Refusal of judge to act.—Remitted action.]—An order was made under C. L. P. Act, 1854 (c. 125), s. 3; referring an action to a county court judge. The judge refused to act, & this ct. refused to rescind the order, but granted a rule in the nature of a mandamus, under County Cts. Act, 1856 (c. 108), s. 45.—CUMMINS v. BIRKETT (1858), 30 L. T. O. S. 260.

To county courts.]—See County Courts Act, 1888 (c. 43), s. 131; COUNTY COURTS, Vol. XIII., pp. 551–554, Nos. 1078–1120.

Workmen's compensation.]—See MASTER & SERVANT.

To arbitrators to state case.]—See Arbitration Act, 1889 (c. 49), s. 19; ARBITRATION, Vol. II., pp. 456–458, Nos. 1034–1037, 1043, 1045–1050.

To coroners.]—See Coroners Act, 1887 (c. 71), s. 6; & generally, CORONERS, Vol. XIII., pp. 232 *et seq.*

To justices.]—See Justices Protection Act, 1848 (c. 44), s. 5; MAGISTRATES.

SECT. 6.—PROCEDURE.**SUB-SECT. 1.—ORDER NISI.****A. Application for.****(a) Parties.**

1345. Joinder of applicants.—Necessity for separate application.]—(1) A return, to a mandamus to restore a common councilman, "that they were chosen yearly, & that before the coming of the writ they were chosen & continued for a year, & that at the end of the year were duly removed from their offices by the election of others," is bad for its uncertainty; for it ought to have shown the time they were elected, so as it might have appeared they were not removed before the year expired.

(2) If several councilmen be removed, they cannot all join in one mandamus to be restored, but each must have a separate writ.—R. v. CHESTER ORRY (1694), 5 Mod. Rep. 10; Comb. 307; 3 Salk. 230; Holt, K. B. 438; 87 E. R. 487.

*Annotation:—*Generally, *Reid*. It. v. TITHE COMRS. (1849), 14 Q. B. 459.

1346. ———.]—Several persons cannot join in a mandamus to restore.—ANDOVER'S CASE (1700), 2 Salk. 433; Holt, K. B. 441; 91 E. R. 377; *sub nom.* R. v. ANDOVER TOWN, 12 Mod. Rep. 332.

*Annotation:—*Distd. R. v. Ipswich (1730), 1 Barn. K. B. 407.

1347. ———.]—Several ought not to join in a writ to be restored.—ANON. (1707), 2 Salk. 436; 91 E. R. 379.

1348. ——— Distinct rights.]—Several persons cannot be joined in one mandamus to a mayor to admit them to their freedoms, for each has a distinct & different right.—R. v. KINGSTON-UPON-HULL CORPN. (1724), 8 Mod. Rep. 209; 11 Mod. Rep. 382; 1 Stra. 578; 88 E. R. 151.

*Annotation:—**Reid*. R. v. Water Eaton Manor (1804), 2 Smith, K. B. 54.

1349. ——— Separate claims.—Successive holders of office.]—One writ of mandamus cannot issue at the instance of two persons for the enforcement of separate claims, although they have been

successors in the same office in respect of which the claims arise.—*Ex p.* SCOTT & MORGAN (1840), 8 Dowl. 328; 4 Jur. 579.

1350. Necessary parties.—Mandamus to remove college fellows.—Members complained of.]—The Ct. of K. B. will grant a mandamus to the master of a college to compel him to take the oaths of the fellows, as prescribed by Oath of Allegiance Act, 1688 (c. 8); but a mandamus directed to the master & fellows of a college, commanding them to remove certain members of the college for not having taken the oaths, is bad, unless the members complained of are made parties to the writ.—R. v. ST. JOHN'S COLLEGE, CAMBRIDGE (1693), 4 Mod. Rep. 233; Comb. 279; Holt, K. B. 436; Skin. 359; 87 E. R. 366.

*Annotation:—**Reid*. It. v. Bland (1740), 7 Mod. Rep. 355.

1351. ——— Mandamus to elect to corporate office.—Subsisting office-holder.]—In rule for a mandamus to elect a mayor, a subsisting mayor *de facto* must always be a party.—R. v. BANKES (1764), 3 Burr. 1452; 1 Wm. Bl. 445; 97 E. R. 922.

1352. Application by member of body.—Writ against applicant & other members.—Parish officers.]—If one parish officer applies for a mandamus against another to concur in a rate the writ must be against both, as well against *appet.* as the other.

You must take the mandamus against the whole of the parish officers, against yourselves as well as the other overseer (*per Cur.*).—ANON. (1818), 2 Chit. 254.

1353. ———.]—The ct. will not, at the instance of one overseer, grant a mandamus to compel another overseer to concur in making a rate. The mandamus must be directed to all the parties whose duty it is to make the rate, & consequently the motion must include the person moving for the writ.—OVERTON'S CASE (1823), 2 L. J. O. S. K. B. 40; *sub nom.* R. v. OVERTON, 2 L. J. O. S. K. B. 44.

1354. ———.]—A writ of mandamus to the overseers & churchwardens of a parish to make a poor rate, may be issued out on the prosecution of one of the overseers, where it appears by affidavit that the other overseer has refused to concur in making the rate, & 1 Will. 4, c. 21, s. 56, makes no difference as to the parties who may obtain the writ.—R. v. GADSBY (1836), 1 Nev. & P. K. B. 572; 1 Nev. & P. M. C. 245.

1355. ———.]—(1) A mandamus to churchwardens & overseers to make a poor rate recited that no rate had been made for the necessary relief of the poor, pursuing the form given by the Crown Office:—*Held*: the writ was good, & it sufficiently appeared that a rate had become necessary.

(2) A mandamus against churchwardens & overseers may be sued out by one of their own body. 1 Will. 4, c. 21, does not affect the law concerning the parties by whom mandamus may be prosecuted.—R. v. EDLASTON (CHURCHWARDENS & OVERSEERS) (1837), Will. Woll. & Dav. 163; 1 J. P. 20; 1 Jur. 53.

1356. ——— Shareholder in company.]—R. v. AMBERGATE, ETC. RY. CO., No. 1301, *ante*.

(b) Who may grant.

1357. King's Bench Division.]—An application under Summary Jurisdiction Act, 1857 (c. 43)

(1909), 9 S. R. N. S. W. 253.—AUS.

1343 i. When granted.—Only in cases where mandamus will lie.]—*Ex p.* KERRISON (1900), 35 N. B. R. 233.—CAN.

PART VI. SECT. 5.

p. When application would lie.]—In an action in a district ct. deft. pleaded that the ct. had no jurisdiction to hear the case. The judge held that defts. did not carry on business in the

district, & that the ct. had no jurisdiction:—*Held*: the decision of the judge was one in respect of which an application would lie for a rule in the nature of a mandamus under District Ct. Act, s. 110.—WHITE v. UNION TRUSTEE CO. OF AUSTRALIA, LTD.

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s. 5, for a rule calling on justices to show cause why a case should not be stated for the opinion of the ct., is properly made to the Q. B. Div., & not to the Div. Ct. constituted under Jud. Act, 1873 (c. 66), s. 45.—*Re ELLERSHAW, Ex p. LONG-BOTTOM* (1876), 1 Q. B. D. 481; 45 L. J. M. C. 163; 2 Char. Pr. Cas. 114; 40 J. P. Jo. 342.

1358. — Effect of Judicature Act, 1873 (c. 66), s. 25.]—*GLOSSOP v. HESTON & ISLEWORTH LOCAL BOARD*, No. 1293, *ante*.

1359. Chancery Division.]—A judge of the Ch. Div. of the High Ct. of Justice has jurisdiction to direct the issue of a mandamus in every cause or matter pending before him.—*Re PARIS SKATING RINK CO.* (1877), 6 Ch. D. 731; 46 L. J. Ch. 831; 25 W. R. 767.

1360. Not Judicial Committee of Privy Council—Order in nature of mandamus.]—The Judicial Committee of the Privy Council have no power under their general jurisdiction, as a ct. of error, to issue an order in the nature of a mandamus to the judges of the C. P. of Tobago, to enter up judgment after verdict obtained on behalf of pltf. in an action of assault, though such judgment ought to have been entered up as of course.—*Re MUIR* (1839), 3 Moo. P. C. C. 150; 13 E. R. 65, P. C.

Annotations:—*Mentd. Re Manning* (1840), 3 Moo. P. C. C. 151; *Re Whitfield* (1845), 5 Moo. P. C. C. 157; *Colonial Bank v. Warden* (1846), 5 Moo. P. C. C. 340.

(c) How made.

1361. Ex parte.]—The ct. will on an *ex p.* application grant a rule *nisi* for a mandamus to the overseers of a parish within the district of a school board to pay precepts issued by such boards, or to levy rates for the purpose of paying them.—*GRIBTHORPE SCHOOL BOARD v. GRIBTHORPE OVERSEERS, Ex p. GRIBTHORPE SCHOOL BOARD* (1883), 47 J. P. 727, D. C.

See, now, C. O. R., r. 232.

1362. Whether by counsel or in person.]—A mandamus is not a criminal proceeding of such a character as to preclude a party from applying for it in person.—*R. v. FAIRBROTHER, ETC. MIDDLESEX JJ.* (1839), 7 Dowl. 767; 3 J. P. 723.

1363. —.]—A motion for a mandamus cannot be made by an appct. in person unless he is a member of the bar.—*Ex p. WASON* (1869), L. R. 4 Q. B. 573; 10 B. & S. 580; 38 L. J. Q. B. 302; 17 W. R. 881.

Annotations:—*Reid. R. v. Adamson, Tynemouth JJ. & Spence* (1875), 24 W. R. 250; *Ex p. Reid* (1885), 49 J. P. 600. *Mentd. Ex p. Lewis* (1888), 21 Q. B. D. 191; *Re Vexatious Actions Act, 1896, Re Boaler*, [1914] 1 K. B. 122.

1364. — Prerogative writ.]—(1) A prerogative writ of mandamus can only be moved for by counsel.

(2) *Qu.*: whether a rule in the nature of a mandamus under Justices Protection Act, 1848 (c. 44), s. 5, can be moved for in person.—*R. v. STANBURY EARDLEY* (1885), 49 J. P. 551, D. C.

Annotation:—*Mentd. Lucan v. Barrett* (1915), 113 L. T. 737.

1365. —.]—A motion for a prerogative writ of mandamus cannot be made by anyone in person but only by counsel, & this applies to a motion for a rule *nisi* as well as to the argument in showing cause against the rule.—*Ex p. WHYTE* (1896), 12 T. L. R. 458; 40 Sol. Jo. 564, C. A.

1366. — Justices Protection Act, 1848 (c. 44).]—*R. v. STANBURY EARDLEY*, No. 1364, *ante*.

1367. —.]—Upon applications [for rules under the above Act] it has been the practice to

allow prosecutor to make the motion in person, notwithstanding the well-known rule in respect to mandamus, for which the present proceeding is a substitute, that the application can only be made by counsel (*WILLS, J.*).—*Ex p. LEWIS* (1888), 21 Q. B. D. 191; 57 L. J. M. C. 108; 59 L. T. 338; 52 J. P. 773; 37 W. R. 13; 16 Cox, C. O. 449; *sub nom. Ex p. LEWIS v. VAUGHAN, MATTHEWS (SECRETARY) & WARREN*, 4 T. L. R. 649, D. C.

Annotations:—*Reid. R. v. Byrde & Pontypool Gas Co., Ex p. Williams* (1890), 60 L. J. M. C. 17. *Mentd. R. v. Kounedy* (1902), 86 L. T. 753; *Burden v. Rigler* (1910), 27 T. L. R. 140.

1368. —.]—An application for a rule under s. 5 of the above Act, calling upon a justice of the peace to show cause why he should not do any act relating to the duties of his office, must be made by counsel.—*Ex p. WALLACE*, [1902] 2 K. B. 488; 71 L. J. K. B. 788; 50 W. R. 678; 18 T. L. R. 740; 46 Sol. Jo. 648, C. A.

1369. — On appeal from order discharging rule.]—On an appeal from the Div. Ct. discharging a rule *nisi* for a mandamus, counsel must be instructed.—*R. v. LIVERPOOL CORPN.* (1891), 55 J. P. 823; 7 T. L. R. 592, C. A.

Appeals generally, *see* Sub-sect. 9, *post*.

(d) Time for.

i. In General.

1370. No definite time prescribed by court.]—A rule *nisi* for a mandamus to restore appct. to the office of parish clerk was discharged in Easter term 1847, on the ground of delay, the dismissal having taken place in Nov. 1841, the then vicar having died in Feb. 1844, & there having been several successive incumbents since that time, although it was sworn that appct. had been reduced to great poverty by his dismissal, & that several applications, verbal & by letter, had been made at different times to the different incumbents for arrears of salary & compensation, or for restoration to his office.

Each case must be dealt with according to its own facts. We lay down no rule that this particular lapse of time is a bar to the remedy by mandamus (*PATTESON, J.*).—*Ex p. STURT* (1847), 9 L. T. O. S. 124; *sub nom. R. v. GIFFORD*, 11 J. P. Jo. 347.

1371. Application must be prompt.]—A party desiring the assistance of this ct. by way of mandamus must apply promptly.

On July 9, 1855, appct. was removed by the rector from his office of parish sexton. On June 10, 1856, he applied for a rule, calling upon the rector to show cause why a mandamus should not issue, commanding him to restore him to his office. No special circumstances were stated why the application was not sooner made:—*Held*: the application was not made within a reasonable time, & was too late.—*R. v. TOWNSEND, Ex p. JOHNSON* (1856), 28 L. T. O. S. 100; 20 J. P. Jo. 740.

1372. Effect of delay—Where applicant's right doubtful.]—Where the right of the party applying for a mandamus is doubtful, the ct. will consider the circumstance of a long period of time having been allowed to elapse before making the application, as good ground for refusing that writ.—*R. v. EVESHAM CORPN.* (1827), 5 L. J. O. S. M. C. 91.

1373. — Poverty of applicant.]—Mandamus to restore parish clerk was refused, where appct. had been guilty of great delay in making the application through poverty, & had been dismissed for misconduct after previous investigation.—*R. v. NEWCOMBE* (1843), 1 L. T. O. S. 313.

1374. — **Jury to assess damages.**—*Re* EASTERN COUNTIES RY. CO. (1845), 9 J. P. Jo. 115.

— **See** COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 206, No. 859.

1375. **Public Authorities Protection Act, 1893 (c. 61), s. 1—Not applicable to prerogative writ.**—

(1) By a Local Govt. Order of the year 1900 certain parishes, of some of which appt. was assistant overseer, were amalgamated, & the order provided that he was to hold office on the same terms as to remuneration as before, so far as possible. Appt.'s salary had previously been fixed at 5 per cent. commission. In accordance with the order the collection of the poor rate in a portion of the amalgamated parish was allotted to appt., & he was given a fixed salary, based upon a three years' average of the commission which he had previously earned. In 1914, appt. applied for a mandamus to the overseers to pay him on the original basis:—*Held*: appt.'s terms of remuneration were as nearly as possible the same as before, & in any case, the writ of mandamus being discretionary, the writ ought not to issue after so great a lapse of time.

(2) *Semble*: (AVORY, J.) the above sect. does not apply to the prerogative writ of mandamus.—*R. v. HERTFORD UNION, Ex p. POLLARD* (1914), 111 L. T. 716; 78 J. P. 405; 12 L. G. R. 863, D. C.

1376. — **See** *R. v. PORT OF LONDON AUTHORITY, Ex p. KYNOCH, LTD.*, No. 1003, *ante*.
See, further, PUBLIC AUTHORITIES & PUBLIC OFFICERS.

1377. **Whether on last day of term.**—The ct. will not hear a motion for a mandamus on the last day of term.—*Ex p. McBEAN* (1911), 27 T. L. R. 401, D. C.

1378. — **See** *R. v. FORT* (1916), 32 T. L. R. 589, D. C.

ii. Particular Instances.

See, generally, C. O. R., r. 68.

1379. **To justices—To make rate—Not after eight years.**—An application was made under 13 Geo. 3, c. 78, s. 47, for a rate to reimburse two inhabitants of a parish on whom a fine for the non-repair of a highway had been levied, after a conviction upon an indictment against the parish for non-repair:—*Held*: such an application ought to be made within a reasonable time after such levy & before any material change of inhabitants, & a mandamus to the justices to make such rate after an interval of eight years, would be refused, even though application had been, from time to time, made to the magistrates below in the interval, who had declined to make the rate.—*R. v. LANCASHIRE JJ.* (1810), 12 East, 366; 104 E. R. 143.

Annotation:—*Mentd.* *R. v. Paddington Vestry* (1829), 9 B. & C. 456.

1380. — **To issue process of execution—Prompt application—Or delay accounted for.**—A mandamus to the ct. of quarter sessions will go, commanding them to issue process of execution, under Vagrancy Act, 1824 (c. 83), s. 14, where there has been no delay in making the application, or the delay has been satisfactorily accounted for.—*R. v. WARWICKSHIRE JJ.* (1835), 2 Ad. & El. 768; 1 Har. & W. 18; 4 Nev. & M. K. B. 370; 2 Nev. & M. M. C. 543; 4 L. J. M. C. 62; 111 E. R. 296.

PART VI. SECT. 6. SUB-SECT. 1.—

A. (d) ii.

a. To municipality—To appoint arbitrator to determine compensation for land—One year for commencement of

action.—The limitation of one year prescribed by Municipal Clauses Act, s. 244, for commencing actions against a municipality applies to mandamus proceedings to compel a municipality

to appoint an arbitrator to determine the amount of compensation for land taken for road purposes.—*R. v. MISSION MUNICIPAL COUNCIL DISTRICT CORPN.* (1900), 7 B. C. R. 513.—*CAN.*

1381. — **Application embracing different causes.**—*R. v. ELLIS & GREENWOOD*, No. 1520, *post*.

1382. — **Application after four years—Acquiescence by delay.**—In Sept., 1839, a poor rate was made for a township, against which an appeal was entered at the Jan. sessions, 1840, & respited on the terms that a new valuation should be made, & that in the meantime the payments should be made according to the last effective rate, & the balance, either for or against appls., should be afterwards paid by, or allowed to them. These terms were agreed to by appls., & S., the assistant overseer, & the appeal was respited from time to time till the Michaelmas sessions, 1843, when the new valuation was completed, & the rate reduced. Pending this appeal the assistant overseer died, & a new rate was made in May, 1840, in which appls. were rated as in the rate appealed against, & on their refusal to pay were summoned before the petty sessions, who made an order that they should pay according to the agreement, that is, according to the last effective rate. They paid the amount ordered on that rate, & the like amount on four other rates made between that time & Michaelmas, 1843. In Apr., 1844, they were summoned by the overseers to pay in full, & the justices at special sessions were applied to for, & refused, distress warrants to compel such payment. On an application for a mandamus to the justices for this purpose:—*Held*: after so long a time the township must be taken to have acquiesced in the agreement made by S., & the writ must be refused.—*R. v. ROYDS, CHADWICKE & FENTON* (1844), 1 New Sess. Cas. 456; 4 L. T. O. S. 193; 9 J. P. 118.

1383. — **To hear appeal—Prompt application.**—A mandamus to the sessions to hear an appeal must be applied for promptly.—*R. v. WEST RIDING JJ.* (1841), 1 Gal. & Dav. 706.

Annotations:—*Consd.* *R. v. Cheshire JJ., Ex p. Meekin* (1846), 11 J. P. 6. *Refd.* *R. v. Richmond Recorder* (1858), 31 L. T. O. S. 115. *Mentd.* *R. v. Old Stratford* (1842), 2 Gal. & Dav. 82; *R. v. St. Margaret's, Rochester* (1842), 2 Gal. & Dav. 669.

1384. — **Application six months after special case granted.**—Where quarter sessions have granted a special case, which has not been settled for more than six months after being granted, the ct. will not after the expiration of the six months grant a mandamus commanding the justices to enter continuances & hear the appeal.—*R. v. STAFFORDSHIRE JJ.* (1832), 1 Dowl. 481.

1385. — **In term following dismissal of appeal.**—At the Epiphany sessions, upon objection to a notice of appeal, the justices had dismissed the appeal, subject to a special case, or a motion for a mandamus:—*Held*: applt. was not too late in applying, in the Easter term following, for a mandamus to hear the appeal.—*R. v. CHESHIRE JJ.* (1846), 4 Dow. & L. 94; 2 New Sess. Cas. 420; 15 L. J. M. C. 114; 7 L. T. O. S. 235; 10 Jur. 808; *sub nom.* *R. v. CHESHIRE JJ., Ex p. MEEKIN*, 11 J. P. 6.

1386. — **In term following sessions at which refusal made—In absence of special circumstances.**—There having been no fixed rule of practice as to the time within which an application for a mandamus to the sessions to enter continuances & hear an appeal must be made, the ct. ordered that in future such applications must be made not later than in the term following the

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sessions at which the refusal was made, unless special circumstances appear by affidavit to account for the delay to the satisfaction of the ct.—*R. v. RICHMOND (RECORDER)* (1858), *E. B. & E.* 253; 27 *L. J. M. C.* 197; 31 *L. T. O. S.* 115; 22 *J. P.* 674; 4 *Jur. N. S.* 456; 6 *W. R.* 521; 120 *E. R.* 502.

Annotations :—*Mentd. Browne v. Black*, [1912] 1 *K. B.* 316; *Retail Dairy Co. v. Clarke*, [1912] 2 *K. B.* 388.

1387. — Application four months after refusal to hear.—A transfer licence being refused, on appeal the quarter sessions on Oct. 16 refused to hear the appeal on the ground that applt. was not aggrieved. A rule *nisi* for mandamus was moved for & obtained on Feb. 20, no special circumstances being stated for the delay:—*Held*: the application was too late, being contrary to *C. O. R.*, r. 79.—*R. v. GLOUCESTERSHIRE JJ.* (1890), 54 *J. P.* 519, *D. C.*

1388. — To reopen cause determined—Application after three months.—At the general annual meeting the hearing of an application for renewal was appointed for 10 a.m. Notice of opposition had been duly served, but, on the case being called, neither opponent nor his solr. was present. Justices, after sending for both, & they not attending, waited five minutes, & then decided by a majority of five to four to renew the licence. The opponent & his solr. then arrived & asked to be heard, but the justices refused to reopen the matter. On an order *nisi* for a mandamus:—*Held*: as no motion for a mandamus was made for three months, the ct. would discharge the order *nisi* with costs.—*R. v. ROBSON* (1893), 57 *J. P.* 133; 9 *T. L. R.* 163, *D. C.*

1389. To recorder—To hear appeal—Refusal to grant case after adjournment—Application after refusal.—Where the consideration of granting a case was adjourned to the next sessions, & was there refused, & an application was then made for a mandamus:—*Held*: the application was in time.—*R. v. LIVERPOOL (RECORDER)* (1843), 2 *L. T. O. S.* 168.

See, further, MAGISTRATES.

1390. To sessions—To hear complaint—As to erection of turnpike gate—Application after twenty-six years.—Deft. having been convicted of forcibly passing a turnpike gate without paying toll, the ct. refused to issue a mandamus to the sessions to hear an original complaint, touching the conduct of the trustees in the erection of the gate after a lapse of 26 years from the time when it was erected.—*R. v. CAMBRIDGESHIRE JJ.* (1822), 1 *Dow. & Ry. K. B.* 325; 1 *Dow. & Ry. M. C.* 86.

Annotations :—*Refd. R. v. Offlow General Income Tax Comrs.* (1911), 27 *T. L. R.* 353. *Mentd. R. v. Grant* (1849), 13 *Jur.* 1026.

1391. To highway authority—Turnpike trustees—To stop old road—Delay of sixteen years.—*R. v. WEYMOUTH ROAD TRUSTEES* (1845), 5 *L. T. O. S.* 216; 9 *J. P. Jo.* 373.

1392. — To carry out statutory duties—Unexplained laches.—*R. v. ROCHDALE & HALIFAX TURNPIKE ROAD TRUSTEES* (1848), 12 *Q. B.* 448; 11 *L. T. O. S.* 220; 12 *J. P. Jo.* 422; 116 *E. R.* 935.

1393. — Surveyors of highways—To pass accounts—Delay of two years.—The surveyors of highways went out of office in Mar. 1850, having, as it was alleged, a balance in their hands, which they should have paid over to their successors. Subsequently an information was laid against them under Highway Act, 1835 (c. 50), s. 42, which the justices dismissed, & afterwards two separate actions were brought in the county ct.

to recover such balance, in each of which cases pltf. was non-suited. In the Michaelmas term, 1852, a rule was moved for a mandamus commanding them to pass their accounts & pay over the balance:—*Held*: after so long a lapse of time the ct. would not interfere.—*Re ROBINSON* (1852), 20 *L. T. O. S.* 104; 16 *J. P.* 823.

1394. — — — — ——*R. v. HORSFORTH SURVEYORS* (1857), 21 *J. P. Jo.* 388.

See, further, HIGHWAYS, STREETS & BRIDGES.

1395. To company—To proceed with assessment of value of land taken—Compensation for damage sustained—Reasonable time.—The ct. will not grant a mandamus to compel a canal co. pursuant to an Act of Parliament to proceed to an assessment of the value of land taken by them for the purposes of their canal, & of the recompense to be made for the damages thereby sustained, if the parties interested in the land do not make their application to the ct. within a reasonable time after the land was taken by the co., especially if the parties have another remedy by ejectment.—*R. v. STAINFORTH & KEADBY CANAL CO.* (1813), 1 *M. & S.* 32; 105 *E. R.* 12.

Annotations :—*Refd. R. v. Cookermouth Inclosure Comrs.* (1830), 1 *B. & Ad.* 378; *R. v. All Saints, Wigan* (1874), *L. R.* 9 *Q. B.* 317. *Mentd. Dimes v. Grand Junction Canal Co.* (1846), 9 *Q. B.* 469.

1396. — To enrol contracts relating to land taken—After sixty-five years.—A canal co. were empowered by a private Act to purchase lands upon making compensation. The contracts, etc., were to be enrolled with the clerk of the peace for the county, at the expense of the co., & true copies were to be evidence in all cts. A landowner applied for a mandamus requiring the co. to enrol all contracts, etc., relating to certain lands, which had been taken by them from his estate, alleging that, at a late trial between himself & the co., it had been material for him, in order to avail himself of privileges conferred by the Act, to prove that the co. had taken lands from his estate, & that he had incurred great expense in procuring secondary evidence, for want of enrolment of a contract which he was informed & believed, had been made under the circumstances in which enrolment was prescribed by the Act. It appeared that the co. had been in undisturbed possession of the lands in question for 65 years:—*Held*: a mandamus must be refused.—*R. v. LEEDS & LIVERPOOL CANAL CO.* (1840), 11 *Ad. & El.* 316; 1 *Ry. & Can. Cas.* 724; 3 *Per. & Dav.* 174; 113 *E. R.* 435.

Annotation :—*Refd. R. v. All Saints, Wigan* (1874), *L. R.* 9 *Q. B.* 317.

1397. — To purchase lands under notice to treat—Application three months after withdrawal of notice.—A railway co. having served upon a landowner notice to treat for a part of his premises, he served the co. with a counter-notice, requiring them to take the whole of his premises. The co. thereupon withdrew their notice to treat, & the landowner, after lying by for three months, withdrew his counter-notice & applied for a mandamus to compel the co. to take the part according to their original notice.

Held: the landowner had lain by for an unreasonable time, & the writ must be refused.—*Ex p. QUICKE* (1865), 12 *L. T.* 580; 13 *W. R.* 924.

1398. — To make works conformable with provisions of statute—Application six years after bridge built—Insufficient reason for delay.—*R. v. GREAT NORTH OF ENGLAND RY. CO.* (1844), 3 *L. T. O. S.* 161.

See COMPULSORY PURCHASE OF LAND & COM-

PENSATION, Vol. XI., pp. 206, 207, Nos. 842-862, 869; RAILWAYS & CANALS.

1399. To inclosure commissioners—To set out occupation road to allotments—Application twelve years after allotments set out—& possession given.]—Allotments were set out under an inclosure Act, to a party claiming them, & possession given, in or about 1817. There was no road to them, nor any access but through allotments made, or land sold, under the Act to other persons. On motion, in 1829, for a mandamus to the comrs. to set out an occupation road to the first-mentioned allotments:—*Held*: the application came too late.—*R. v. COCKERMOUTH INCLOSURE ACT COMRS.* (1830), 1 B. & Ad. 378; 9 L. J. O. S. K. B. 38; 109 E. R. 827.

1400. To local authority—Reimbursement by parish—Lapse of six months.]—R. v. WEST RIDING OF YORKSHIRE JJ. (1843), 1 L. T. O. S. 56; *sub nom.* *R. v. MANNINGHAM (CHURCHWARDENS & OVERSEERS)*, 7 J. P. 238; *subsequent proceedings, sub nom. R. v. MANNINGHAM (CHURCHWARDENS & OVERSEERS)*, 7 J. P. 611.

1401. — Repayment of loan secured on poor rate—Application thirteen years after payment due—Repeated applications.]—In 1840 a new survey of the property in a parish liable to the poor rate was made, & the cost thereof paid by money borrowed & charged on the poor rate, under Parochial Assessments Act, 1836 (c. 96), s. 3. The money ought to have been paid off in 1845, but was not. There was some evidence of applications & interviews, etc., in the interval between Aug. 1845 & 1856, to obtain payment of the balance unpaid:—*Held*: the lender was not deprived by laches from obtaining a mandamus in 1858 to enforce payment of the arrears.—*R. v. HURSTBOURNE TARRANT OVERSEERS* (1858), E. B. & E. 246; 27 L. J. M. C. 214; 31 L. T. O. S. 115; 22 J. P. 817; 4 Jur. N. S. 783; 120 E. R. 500; *sub nom.* *HEATH v. HURSTBOURNE TARRANT (CHURCHWARDENS)*, 6 W. R. 521.
Annotation:—*Reid. R. v. All Saints, Wigan* (1876), 1 App. Cas. 611.

1402. — Debt of local board—Application six months after accrual of debt.]—WARD v. LOWNDES, No. 1331, *ante*.

1403. — To compel procedure under local statute—Application five years after presentment by grand jury.]—Certain local enactments provided that on presentment by the grand jury at quarter sessions the owner of insanitary premises, or on his default the local authority, should take down & remove such premises, & that in either case the owner should receive compensation from the local authority for the damage sustained by him. In 1904 two such presentments were made, one of a "court" & the other of the houses on one side of it. Those houses were accordingly taken down & removed, & compensation was paid to the owner in respect of their demolition. In 1909 the local authority took proceedings before a ct. of summary jurisdiction under Housing of the Working Classes Act, 1890 (c. 70), Part II., to obtain a closing order in respect of the houses on the other side of the court. Whereupon the owner, relying on the presentment of the "court" brought an action against the local authority to compel them to proceed under the local enactments with respect to those houses, & to restrain them from proceedings under the general Act, under which

no compensation would have been payable:—*Held*: as the "court" did not include the houses at the side of it, & by reason of pltf.'s delay, the mandamus ought not to be granted.—*MERRICK v. LIVERPOOL CORPN.*, [1910] 2 Ch. 449; 79 L. J. Ch. 751; 103 L. T. 399; 74 J. P. 445; 8 L. G. R. 966.

1404. — To compel payment of salary of overseer—Salary fixed by amalgamation of parishes—Application twelve years after amalgamation.]—*It. v. HERTFORD UNION*, *Ex p.* POLLARD, No. 1375, *ante*.

1405. To guardians—Repayment of loan made under 22 Geo. 3, c. 83, s. 20—Application more than twenty years after loan—Interest paid yearly.]—A party, who has advanced money to the guardians of the poor under 22 Geo. 3, c. 83, s. 20, is not affected by the omission of the guardians to pay off or provide for one-twentieth part of his debt annually, but is entitled to a mandamus to them to pay his debt & interest, though twenty years have elapsed from the time when the money was borrowed, & he has only been paid his interest yearly.—*R. v. BRIGHTON (CHURCHWARDENS & OVERSEERS)* (1837), 1 Nev. & P. K. B. 774; Nev. & P. M. C. 292; Will. Woll. & Dav. 330; 6 L. J. M. C. 100; 1 Jur. 308.

Annotation:—*Consd. R. v. St. Michael, Southampton Overseers* (1856), 2 Jur. N. S. 1090.

See, further, POOR LAW.

1406. To revenue authorities—To recover excess of duty paid—Delay of nine years.]—Where exors. paid probate duty partly under mistake of law & partly with a reservation of their right to have the excess refunded without regard to delay, & it was subsequently decided in another case that no duty at all was payable as claimed:—*Held*: an application made nine years later for a mandamus to state a case for the full ct. was not brought within a reasonable time, & must be refused.—*BROUGHTON v. STAMPS DUTIES COMR.*, [1899] A. C. 251; 68 L. J. P. C. 36, P. C.

1407. To rector & churchwardens—Election of new churchwardens—Delay of three months—Mandamus refused.]—R. v. HANDBOROUGH (CHURCHWARDENS) (1877), 37 L. T. 400; 41 J. P. 807, D. C.

See, further, ECCLESIASTICAL LAW.

To rating authorities.]—See RATES & RATING.

(e) Evidence in Support.

See, now, C. O. R., rr. 5-11, 65.

1408. Necessity for affidavit.]—CURSER v. SMITH (1728), 1 Barn. K. B. 59; 94 E. R. 41; *subsequent proceedings*, 1 Barn. K. B. 68.

1409. —.]—Upon making a motion for a writ of mandamus, where a corpn. by prescription is in question, the constitution of it as well as the parties' rights, must be verified by affidavit, & if the corpn. is by charter, a copy of the charter must be produced at the time of making the motion.—*VINTNERS CO.'S CASE* (1751), Bull. N. P. 7th ed. 200 b.

1410. How affidavits intitled.]—R. v. GLOUCESTER & BIRMINGHAM RY. CO., No. 1462, *post*.

1411. — Amendment of.]—The title of an affidavit on which a rule has been obtained may be amended on payment of costs the opposite party having leave to file affidavits in reply.—*R. v. WARWICKSHIRE JJ.* (1836), 5 Dowl. 382.

—, "though it is more proper to intitle them only in the ct.—*Re AUGUSTA MUNICIPALITY v. LEEDS & GREENVILLE MUNICIPAL COUNCIL* (1865), 1 P. R. 121.—CAN.

PART VI. SECT. 6, SUB-SECT. 1.—A. (a).

1410 i. How affidavits intitled.]—Affidavits used on motion for a rule nisi for a mandamus are irregular if

entitled in a cause.—*R. v. YORK JJ.* (1848), 6 N. B. R. (1 All.) 90.—CAN.

1410 ii. —.]—Affidavits in moving for a rule nisi for a mandamus may be intitled "In re, complaint of — v.

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1412. Contents of affidavit—Admission to office—Must state nature of office.]—The ct. will not grant a mandamus to admit to an office unless the nature of the office be stated.—ANON. (1682), 2 Mod. Rep. 316; 80 E. R. 1096.

1413. — Must show title to office.]—A mandamus will not lie to compel the high steward of a corpn. to admit a commoner, unless the person claiming to be so admitted show that he has a good title *in omnibus*.—R. v. MALMESBURY (HIGH STEWARD) (1840), 4 Jur. 222.

1414. — Restoration to office—Office of public nature.]—ANON., No. 1252, *ante*.

1415. — Enjoyment of office.]—On motion for a mandamus to restore one to an office no affidavit that he once enjoyed it is necessary, as that fact may be stated in the return.—R. v. CUTLERS CO. (1735), Lee *temp.* Hard. 129; 95 E. R. 81.

Admission & restoration to office, *see* Sect. 1, sub-sect. 5, B., *ante*.

1416. — Appointment of overseers—Where none appointed before.]—A mandamus to appoint overseers of the poor in a hamlet where there were never any before, was granted.—R. v. WESTMORLAND JJ. (1746), 1 Wils. 138; 95 E. R. 537.

1417. — Must show place to be a vill.]—To obtain a mandamus for the appointment of overseers for a particular place it must expressly be sworn that the place in question either is, or is reputed to be, a vill.—R. v. BEDFORDSHIRE JJ. (1782), Cald. Mag. Cas. 167.

1418. — Payment of compensation into Bank of England—Defective title.]—Where a local improvement Act enabled a co. to purchase lands, & contained the usual clauses for a compensation jury, & also enacted, that in case the person to whom the compensation should be awarded should not be able to make a good title to the premises, it should be lawful for the co. to pay the money into the Bank of England in the name of the Accountant-General:—*Held*: when the co. after an award made, in consequence of a difference as to the purchase-money, had objected to the title of the purchaser, the purchaser was not entitled to a mandamus to the co. to pay the purchase-money into the bank, unless he distinctly showed to the ct. that he could not make out a good title.—R. v. DEPTFORD PIER & IMPROVEMENT CO. (1838), 8 Ad. & El. 910; 1 Per. & Dav. 128; 8 L. J. Q. R. 62; 112 E. R. 1084; *sub nom.* COLLIER v. DEPTFORD PIER & IMPROVEMENT CO., 2 Jur. 1039.

Annotation:—*Mentd.* R. v. Bodmin JJ., [1892] 2 Q. B. 21.

See, also, Sect. 1, sub-sect. 5, C., *ante*.

1419. — Must show refusal—Award by inclosure commissioner.]—The ct. will not grant a mandamus to an inclosure commr. commanding him to execute an award under an inclosure Act, unless it appears distinctly upon affidavit that he has been applied to & has refused, & for that purpose his answer to the application should be stated.—R. v. PRIORS DITTON INCLOSURE COMRS. (1840), 4 Jur. 193.

1420. — Admission of copyhold tenant.]—R. v. QUARLEY (LORD OF THE MANOR) (1845), 9 J. P. Jo. 389.

r. Contents of affidavit—Uncertainty—Issue of alternative mandamus.]—Er p. GRAY (1858), 9 N. B. R. (4 All.) 118.—CAN.

s. — Must state purpose or object for which writ is sought.]—A mandamus will not be granted when the affidavit to ground the application

neither states the purpose or object for which the writ is sought.]—LAWLESS v. POLICE COMRS. (1849), 13 L. R. 387; 2 Ir. Jur. O. S. 70.—IR.

t. — Must substantially comply with rules of court.]—R. v. DUBLIN COUNTY COUNCIL (1905), 40 L. T.

130.—IR.

a. — To compel municipality to take shares subscribed for—Whether necessary to set out agreement to subscribe.]—Re CANADA CENTRAL RY. CO. & BROWN (1874), 35 U. C. R. 390.—CAN.

1421. — Copy of conviction to prisoner.]—*Ex p.* HUNTLEY (1869), 33 J. P. Jo. 775.
Refusal of compliance, *see* Sect. 1, sub-sect. 3, D., *ante*.

1422. — Mandamus to sessions to hear appeal—Must show all material facts at sessions.]—The affidavits on motion for a mandamus to sessions to hear an appeal should state all the material facts that occurred at the sessions.—R. v. WEST RIDING OF YORKSHIRE JJ., ST. PANCRAS v. BRADFORD (1845), 3 Dow. & L. 152; 2 New Sess. Cas. 1; 14 L. J. M. C. 119; 5 L. T. O. S. 152; 9 J. P. 822; 9 Jur. 790.

1423. — Must identify applicant—Must show bona fide interest in subject-matter.]—R. v. PETERBOROUGH CORPN., No. 917, *ante*.

1424. —]—Ex p. YOUNG (1892), 37 Sol. Jo. 67, D. C.

1425. — C. O. R. 1906, r. 65.]—It is necessary to comply strictly with C. O. R., r. 65, which provides that a mandamus shall not be granted unless, when the rule is moved, an affidavit of appct. or his solr. is produced, stating at whose instance the motion is made as prosecutor (AVORY, J.).—R. v. ANDOVER RURAL DISTRICT COUNCIL, *Ex p.* THORNHILL (1913), 77 J. P. 296; 29 T. L. R. 419; 11 L. G. R. 996, D. C.

1426. — Must show jurisdiction improperly exercised.]—Where in an affidavit on a motion for a rule *nisi* for a mandamus it was stated that appcts.' plans were thrice rejected by resps. without giving any reason therefor, but it was not proved that resps. had exercised their jurisdiction improperly or not at all the ct. refused to grant a rule.—DEAN v. MIDDLESBOROUGH CORPN. (1906), 3 Architects' L. R. 133, D. C.

Whether second application on amended affidavit permitted.]—See Nos. 1434, 1435, *post*.

1427. Necessity for stamping affidavits.]—Qu.: whether affidavits on motion for mandamus are exempted from stamp by 5 Geo. 4, c. 41, s. 1.—R. v. LICHFIELD CORPN. (1841), 1 Q. B. 453; 10 L. J. Q. B. 171; 5 Jur. 889; 113 E. R. 1206.

Annotations:—*Mentd.* R. v. Dover Corpn. (1817), 11 Q. B. 260; *Itc* Harwich Corpn. (1852), 21 L. J. Q. B. 193; R. v. Clifton Dartmouth Hardness Corpn. (1851), 22 L. T. O. S. 240; *Seale v. R.* (1857), 8 E. & B. 22; *Rochester Corpn. v. R.* (1858), 4 Jur. N. S. 1227.

1428. In support of amended rule nisi—Filing after cause shown.]—Where an order *nisi* for a prerogative writ of mandamus has been amended affidavits in support of the amendment may only be filed after cause has been shown, & where cause is shown an adjournment for this purpose will, if necessary, be granted.—R. v. WEST SUSSEX COUNTY COUNCIL, *Ex p.* ARUNDEL CORPN. (1921), 125 L. T. 407; 85 J. P. 162; 19 L. G. R. 337, D. C.

1429. Necessity to produce original documents—Or verified copies.]—A motion for a mandamus was refused, because neither the original statutes governing the matter in question nor any copies regularly attested were produced.—R. v. CANTERBURY (ARCHBP.) (1734), Ridg. *temp.* H. 81; 7 Mod. Rep. 220; 87 E. R. 1202; *sub nom.* ANON., 2 Barn. K. B. 437; 94 E. R. 603.

1430. —]—VINTNERS CO.'S CASE, No. 1409, *ante*.

1431. —]—Where an overseer is rendered

incompetent to serve by Poor Law Amendment Act, 1834 (c. 76), s. 97, in consequence of a conviction & an application is made for a mandamus to compel him to deliver up books, etc. belonging to the parish, the conviction must be annexed to the affidavits in support of the rule.—*R. v. SIMMS* (1835), 4 Dowl. 294; 1 Har. & W. 514; 3 Nev. & M. M. C. 151.

1432. — Or contents stated by affidavit.]—In applying for a mandamus to the steward of a manor to enrol a deed of disposition, pursuant to Fines & Recoveries Act, 1833 (c. 74), s. 53, it is not necessary to annex a copy of the deed itself, if the contents are stated in the affidavit.—*CROSBY v. FORTESCUE* (1836), 5 Dowl. 273.

1433. — Semble: on moving for a rule *nisi* for a mandamus to the steward of a manor, to enrol a deed under Fines & Recoveries Act, 1833 (c. 74), s. 53, it is not necessary to attach a copy of the deed to the affidavit on which the rule is moved.—*R. v. LUNN* (1836), 2 Har. & W. 311.

(f) *Second Application.*

1434. Not on amended affidavits.]—Where a rule for a mandamus, obtained by churchwardens, had been discharged, with costs, on the ground that their affidavits were imperfect, & a subsequent rule was obtained by the same parties, on the same ground, on amended affidavits, the ct. refused to hear the second application upon the merits, & discharged the second rule also, with costs.—*R. v. PICKLES* (1842), 3 Q. B. 599, n.; 12 L. J. Q. B. 40; 6 J. P. 771; 6 Jur. 1039; 114 E. R. 636, n.

*Annotations:—***Refd.** *Tilt v. Dickson* (1817), 4 C. B. 736; *Dodgson v. Scott* (1848), 2 Exch. 457.

1435. — Unless amendment of error in title—Or jurat of affidavit.]—The general rule of practice is, that a party failing in a motion by reason of a defect in his affidavit shall not repeat his application on an amended affidavit, showing no ground of application which might not have been presented before. The only exceptions which the ct. will generally admit are where the amendment consists merely in correcting an error in the title or *jurat* of the affidavit.—*R. v. GREAT WESTERN RY. CO.* (1844), 5 Q. B. 597; 1 Dow. & L. 874; 3 Ry. & Can. Cas. 700; 1 Dav. & Mer. 471; 13 L. J. Q. B. 129; 2 L. T. O. S. 368; 8 Jur. 107; 8 J. P. Jo. 120; 114 E. R. 1374.

*Annotations:—***Refd.** *Tilt v. Dickson* (1817), 4 C. B. 736; *Dodgson v. Scott* (1848), 2 Exch. 457.

1436. On same affidavits—Writ not drawn up in conformity with rule under which issued—After discharge of rule nisi to amend previous rule.]—The ct. quashed a writ of mandamus on the ground that it was not drawn up in conformity with the rules on which it issued. Subsequently, the ct. discharged a rule for so amending the rules first mentioned, as to make them agree with the writ. Afterwards a rule *nisi* was granted on reading the same affidavits on which the rule *nisi* for amending the previous rules had been obtained, for a writ of mandamus in the terms of the first writ:—**Held:** as the application was not one on amended materials, & the first rule had failed through a mistake of counsel or the officer, the rule ought to be made absolute.—*R. v. EAST LANCASHIRE RY. CO.* (1847), 9 Q. B. 980; 16 L. J. Q. B. 127; 8 L. T. O. S. 388; 11 J. P. 858; 11 Jur. 169; 115 E. R. 1550.

Affidavits in support of application.]—*See* Subsect. 1, A. (e), *ante*.

Necessity for writ to be in conformity with rule.]—*See* Nos. 1525–1528, *post*.

1437. Dismissal of first application for want of

demand & refusal—Subsequent demand & refusal.]

—Where a rule for a mandamus to compel a corpn. to make an order has been discharged, on the ground that no demand & refusal have taken place, the ct. will not grant a new rule for a mandamus to the same effect, though a demand & refusal have taken place since the discharge of the former rule.—*Ex p. THOMPSON* (1845), 6 Q. B. 721; 14 L. J. Q. B. 176; 9 J. P. Jo. 37; 115 E. R. 272; *sub nom.* *R. v. STAMFORD CORPN.*, 9 Jur. 159.

*Annotation:—***Fold.** *R. v. Bodmin JJ.*, [1892] 2 Q. B. 21.

1438. ——(1) Where a rule *nisi* for a mandamus has been discharged on the ground that the affidavits do not show a previous demand & refusal to perform the duty sought to be enforced by mandamus, a second application for the same object based upon fresh materials will not be entertained.

(2) A mandamus will not issue to compel an appointment to an office held at pleasure (*DAY, J.*).—*R. v. BODMIN CORPN.*, [1892] 2 Q. B. 21; 61 L. J. M. C. 151; 66 L. T. 562; 56 J. P. 504; 40 W. R. 606; 8 T. L. R. 553; 36 Sol. Jo. 489, D. C. *Annotation:—***As to** (1) *Consd.* *R. v. Kensington Income Tax Comrs.*, *Ex p. Edmond de Polignac*, [1917] 1 K. B. 186.

Previous demand for & refusal of compliance.]—*See* Sect. 1, sub-sect. 3, D., *ante*.

1439. Delay in compliance with first writ—Election of corporation officers.]—If there be delay in obeying a mandamus for electing corpn. officers, a second mandamus ought to be awarded.—*R. v. HASLEMERE CORPN.* (1753), Say. 106; 96 E. R. 819.

*Annotation:—***Mentd.** *R. v. Wigan Corpn.* (1759), 2 Burr. 782.

1440. Suppression of first writ.]—A second mandamus for electing corpn. officers ought not to be awarded upon the presumption that the first will be suppressed, since it is not to be presumed that any person will dare to suppress a writ of the ct.—*R. v. SCARBOROUGH CORPN.* (1753), Say. 105; 96 E. R. 818.

*Annotation:—***Refd.** *R. v. Wigan Corpn.* (1759), 2 Burr. 782.

1441. Right wrongly stated—On first application.]—The ct. refused a second mandamus to try a right where the first failed in consequence of the right being wrongly stated.—*R. v. MALMSBURY* (1843), 1 L. T. O. S. 229.

1442. After determination on rule nisi—Question cannot be discussed again as special case—Before return.]—After the determination of the ct., upon a rule *nisi* for a mandamus, the question decided cannot be again discussed as a special case, until there is a return made to the writ.—*R. v. LEICESTER J.J.* (1826), 7 Dow. & Ry. K. B. 708; 3 Dow. & Ry. M. C. 535.

1443. When concurrent mandamus issued.]—Cross or concurrent *mandamus* to go to election will not be granted without special reasons.—*R. v. WIGAN CORPN.* (1759), 2 Keny. 504; 96 E. R. 1260; *sub nom.* *R. v. CURGHEY*, 2 Burr. 782.

B. Form of.

1444. May be moulded by court.]—*R. v. St. PANCRAAS CHURCH TRUSTEES*, No. 1660, *post*.

1445. ——*R. v. TITHE COMRS.*, No. 1523, *post*.

1446. May be amended on hearing—To meet terms of statute.]—Under Highway Act, 1835 (c. 50), s. 94, justices in special sessions have a discretionary power, on receiving a report of a viewer duly appointed by them, that a certain road is out of repair, as to whether they will or will not convict in a penalty the surveyor of highways. A rule *nisi* for a mandamus requiring the justices so to convict was discharged with costs. The rule *nisi* called upon the justices to convict

Sect. 6.—Procedure: Sub-sect. 1, B., C., D. & E.; sub-sects. 2 & 3.]

"in a penalty of £5":—*Held*: the rule might be amended "in a penalty not exceeding £5" to meet the terms of the Act, it appearing upon prosecutor's affidavit that he had, on applying to the justices at the special sessions, only required the justices to convict in "a penalty."—*R. v. RADNOR (EARL), SADLER, CROWDY & FREKE (WILTS JJ.)* (1840), 4 J. P. 346; 4 Jur. 460.

1447. Whether granted in the alternative—Alternative remedies.]—The ct. will not grant a rule in the alternative for a mandamus or a *quo warranto*.—*R. v. LEEDS CORPN.* (1841), 11 Ad. & El. 512; 4 Per. & Dav. 632; 10 L. J. Q. B. 112; 5 J. P. 435; 5 Jur. 548; 113 E. R. 510.

Annotations:—*Consd.* *R. v. Welchpool Corpn.* (1876), 35 L. T. 594. *Refd.* *R. v. Chester Corpn.* (1855), 25 L. J. Q. B. 61; *R. v. St. Faith* (1856), 4 W. R. 267; *R. v. Bangor Corpn.* (1886), 18 Q. B. D. 349.

1448. — Alternative compliance.]—*R. v. GREAT NORTHERN RY. CO., Ex p. WARD*, No. 1537, *post*.

1449. Whether single rule for several writs.]—A rule to show cause why one or more writs of mandamus should not issue, is an improper form of rule.—*R. v. BRIDGNORTH CORPN.* (1839), 10 Ad. & El. 66; 2 Per. & Dav. 317; 8 L. J. M. C. 86; 3 J. P. 674; 3 Jur. 384; 113 E. R. 26.
Annotation:—*Refd.* *R. v. Chipping Wycombe Corpn.* (1875), 44 L. J. Q. B. 82.

C. Service of.

See, now, C. O. R., rr. 50, 51.

1450. Mandamus to sessions to hear appeal—Service on justices—Without serving clerk of the peace.]—Service of a rule *nisi* for a mandamus to the sessions to hear an appeal against the determination of the petty sessions, need not be upon the clerk of the peace. It is sufficient if it is served on the justices whose decision is complained against.

If the writ commanded them to do that which by law they have no power to do, it would be the duty of this ct. to quash it (*ABBOTT, C.J.*).—*R. v. TUCKER* (1821), 3 B. & C. 544; 5 Dow. & Ry. K. B. 434; 2 Dow. & Ry. M. C. 479; 107 E. R. 835.
Annotation:—*Refd.* *R. v. Kent JJ.* (1829), 9 B. & C. 283.

1451. — & respondent.]—On an application for a mandamus to the sessions to hear an appeal under 7 & 8 Vict. c. 101, s. 4, a copy of the rule *nisi* should be served on resp. as well as the justices.—*R. v. DERBYSHIRE JJ.* (1844), 1 New Sess. Cas. 461; 4 L. T. O. S. 120; 9 Jur. 181.

1452. On party interested—Objection to name on burgess roll.]—*R. v. EXETER CORPN., DIPSTALE'S CASE*, No. 1455, *post*.

D. Showing Cause against.

1453. Who may show cause—New occupant of office.]—*Semble*: in a case where a parish is concerned, if a rule is obtained while certain persons are in office, but is not discussed till their time of office has passed, & other persons have been elected & sworn in, this ct. will make the new officers parties to the rule, to enable them to show cause against it.—*R. v. ST. JAMES, WESTMINSTER (CHURCHWARDENS)* (1836), 5 Ad. & El. 391; 2 Har. & W. 253; 111 E. R. 1213.

1454. — Interested persons—By counsel.]—A rule *nisi* for a mandamus to compel justices to hear an appeal against a conviction under a local turnpike Act having been obtained:—*Held*: counsel instructed by the trustees of the road on which the offence was alleged to have been com-

mitted, but not by the justices, could be heard to show cause against making the bill absolute.—*R. v. MIDDLESEX JJ.* (1843), 2 Dowl. N. S. 719; 12 L. J. M. C. 59; 7 J. P. 240; 7 Jur. 396.

Annotations:—*Refd.* *R. v. Leicestershire JJ.* (1859), 8 W. R. 66. *Mentd.* *Rowberry v. Morgan* (1854), 9 Exch. 730; *Peacock v. R.* (1858), 4 C. B. N. S. 264; *Radclyffe v. Bartholomew*, [1892] 1 Q. B. 161.

1455. — — —.]—Where a burgess has been struck off the burgess roll on the objection of another burgess, the objector has sufficient interest in the matter to entitle him to appear on the rule, though the official deft. does not & it is proper, though perhaps not imperative, to serve notice of the rule on such objector.—*R. v. EXETER CORPN., DIPSTALE'S CASE* (1868), L. R. 4 Q. B. 114; 19 L. T. 432; 33 J. P. 39.

Annotations:—*Mentd.* *Purves v. Wimbledon & Putney Commons Conservators* (1890), 62 L. T. 529; *Barlow v. Smith* (1892), Fox & S. Reg. 293.

1456. — Not dissenting justice.]—*R. v. WAD-DINGHAM, ETC. GLOUCESTERSHIRE JJ. & TUSTIN* (1896), 60 J. P. Jo. 372, D. C.

—*See C. O. R., r. 52.*

1457. Whether by counsel or in person—Review of Justices Decisions Act, 1872 (c. 26).]—*R. v. FIELD, ETC. JJ., Ex p. WHITE* (1895), 61 L. J. M. C. 158; 11 T. L. R. 240, D. C.

Annotations:—*Mentd.* *Shortt v. Robinson* (1899), 68 L. J. Q. B. 352; *Preston v. Redfern* (1912), 107 L. T. 410; *Hunt v. Richardson*, [1916] 2 K. B. 446.

1458. — Prerogative writ.]—*Ex p. WHYTE*, No. 1365, *ante*.

1459. Right of reply—Attorney-General showing cause—Mandamus to Lords of Treasury to issue warrant for payment of annuity.]—*R. v. TREASURY LORDS COMRS., Ex p. BROUGHAM & VAUX (LORD)*, No. 1168, *ante*.

Right to begin, *see C. O. R., r. 136.*

1460. Time for—Enlargement of rule—Not where rights of parties prejudiced.]—*CANTERBURY (ARCHBP.) & TRINITY COLLEGE, CAMBRIDGE (MASTER, FELLOWS & SCHOLARS)* (1729), 1 Barn. K. B. 194; 94 E. R. 133.

Not where rule likely to be made absolute on argument.]—*R. v. OXFORD CORPN., R. v. OXFORD (SHERIFF)* (1858), 22 J. P. Jo. 384.

1462. — — — No direction that rule to be heard as ordinary motion—Without consent of party.]—(1) In moving the ct. after a rule *nisi* for a mandamus, the affidavits may be intitled, either "in the Q. B." only, or "in the Q. B. R. on the prosecution of —."

(2) In enlarging a rule for a mandamus until the next term, the ct. cannot direct, that the rule shall come on to be heard as an ordinary motion. This can only be done by the consent of the parties.—*R. v. GLOUCESTER & BIRMINGHAM RY. CO.* (1839), 3 J. P. 737.

1463. Objection of no demand or refusal—Must be taken before merits discussed.]—*R. v. EASTERN COUNTIES RY. CO.* (1840), 10 Ad. & El. 531; 1 Ry. & Can. Cas. 509; 2 Per. & Dav. 648; 8 L. J. Q. B. 340; 113 E. R. 201.

Annotations:—*Refd.* *R. v. Bristol & Exeter RY.* (1843), 4 Q. B. 162; *R. v. Halifax Road Trustees* (1848), 12 Q. B. 448; *R. v. L. & N. W. RY.* (1849), 13 J. P. Jo. 762; *R. v. Ambergate, etc. RY.* (1851), 17 Q. B. 362; *R. v. L. & N. W. RY.* (1851), 16 Q. B. 864; *R. v. L. & Y. RY.* (1852), 22 L. J. Q. B. 57; *York & North Mid. RY. v. R.* (1853), 1 E. & B. 858. *Mentd.* *Exeter & Crediton RY. v. Buller* (1847), 5 Ry. & Can. Cas. 211; *Cohen v. Wilkinson* (1849), 12 Beav. 138.

Necessity for demand and refusal.]—*See Sect. 1, sub-sect. 3, D., ante.*

1464. Affidavits in answer—Must state place where sworn.]—Affidavits in answer to a rule for a mandamus sworn before a comr. must contain the place where sworn, otherwise they cannot be

read.—*R. v. WEST RIDING OF YORKSHIRE JJ.* (1815), 3 M. & S. 493; 105 E. R. 695.
Annotations.—*Mentd.* *R. v. Byrne* (1837), 2 Nev. & P. K. B. 152; *R. v. Bloxham* (1844), 6 Q. B. 528.

1465. — *Copies to opposite side.*—*R. v. HUDSON* (1845), 4 L. T. O. S. 353; 9 Jur. 345; 9 J. P. Jo. 100.

1466. — *Mandamus against justices.*—A rule nisi had been obtained calling upon certain justices to show cause why a writ of mandamus should not issue commanding them to grant a spirit licence to N. The justices did not appear to show cause, but forwarded to the ct., for the purpose of being filed, an affidavit sworn by the superintendent of police, upon whose information the justices had refused the licence:—*Held*: the affidavit under Review of Justices Decisions Act, 1872 (c. 26), ss. 1 & 2, must be sworn by the justice himself, & affidavits sworn by persons upon whose evidence the decision of the justice was founded were not admissible under the statute.—*R. v. SPERLING* (1873), 21 W. R. 461; 37 J. P. Jo. 87.

—*See* C. O. R., rr. 9, 10.

1467. *Report of master on facts not ascertained by affidavits—Counsel not entitled to be heard on.*—Upon the argument of a rule, certain facts were not ascertained by the affidavits on either side, & the ct. referred the matter to the master, to inquire & report as to them. Upon the report being read, the ct. refused to hear counsel upon the facts stated in the report, the other parts of the case having been argued previously to the reference.—*R. v. CHESHIRE JJ.* (1844), 1 New Sess. Cas. 223; 13 L. J. Q. B. 261; 3 L. T. O. S. 159; 8 J. P. 356; 8 Jur. 645.

E. Court Fees.

1468. *On entering rule nisi—Ordering magistrate to hear application for summons—Supreme court fees payable to Crown Office.*—The Order as to supreme ct. fees, 1884, Sched. 52, which provides for the payment of a fee of £2 on entering or setting down “a cause or matter for trial or hearing in any ct. in London or Middlesex or at any assizes,” is not confined to cases where the matter for hearing arises in an action. Such fee is therefore payable to the Crown Office on entering a rule nisi against a police magistrate ordering him to hear an application for a summons.—*Ex p. HASKER* (1884), 14 Q. B. D. 82; 54 L. J. M. C. 94, D. C.

Annotation.—*Mentd.* *Re A Solicitor, Ex p. Dudley* (1885), 33 W. R. 750.

Costs.—*See* Sub-sect. 10, *post*.

SUB-SECT. 2.—ORDER ABSOLUTE.

1469. *When granted—General rule.*—This rule calls upon the visiting justices of the M. lunatic asylum to show cause why they should not be commanded by mandamus to admit T. into the asylum that he may perform his duties as chaplain, & to pay the arrears of his salary. It appears to me they have shown sufficient cause & that the rule must be discharged. If we felt any reasonable doubt, we would call for a return in order that the question might be solemnly discussed, but it does not seem to me that any reasonable doubt has been raised (LORD DENMAN, C.J.).—*R. v. MIDDLESEX ASYLUM (VISITORS)* (1842), 2 Q. B. 433;

2 Gal. & Dav. 300; 11 L. J. M. C. 30; 6 Jur. 682; 114 E. R. 171.

1470. — *Case for further investigation.*—*R. v. BIRMINGHAM & DERBY RY. CO.* (1843), 1 L. T. O. S. 313.

1471. — — — — — *R. v. PHILLIPS* (1845), 6 L. T. O. S. 132; 9 J. P. Jo. 759.

1472. — — — — — *R. v. LONG* (1845), 6 L. T. O. S. 132; 9 J. P. Jo. 759.

1473. — — — — — *R. v. PORTSMOUTH CORPN.* (1846), 7 L. T. O. S. 112; 10 J. P. Jo. 293.

1474. — — — — — *R. v. MOTT* (1848), 11 L. T. O. S. 126; 12 J. P. Jo. 323; *subsequent proceedings* (1849), 3 New Mag. Cas. 178.

1475. — — — — — *R. v. HULL GUARDIANS* (1855), 24 L. T. O. S. 256; *subsequent proceedings*, 7 E. & B. 801, n.

1476. — — — — — *Question of law of general importance.*—*Re TIVERTON BURIAL BOARD* (1857), 28 L. T. O. S. 288.

1477. — — — — — *When cause not shown—Affidavit of service on opposite party.*—*R. v. GRUNDY* (1846), 10 J. P. Jo. 390.

1478. — — — — — *Re RACE* (1856), 27 L. T. O. S. 185; *subsequent proceedings*, 27 L. T. O. S. 281.

1479. — — — — — *R. v. MIDDLESEX JJ.* (1847), 11 J. P. Jo. 421.

1480. — — — — — *Where cause cannot be successfully shown—Admission by opposite party.*—*R. v. MIDDLESEX JJ.* (1848), 10 L. T. O. S. 373; 12 J. P. Jo. 149.

1481. — — — — — *On application for enlargement of rule—Rule likely to be made absolute on argument.*—*R. v. OXFORD CORPN., R. v. OXFORD (SHERIFF)* (1858), 22 J. P. Jo. 384.

1482. — — — — — *Where no affidavits sworn in answer—Affidavit of refusal construed in favour of party making it.*—A rule calling upon justices to show cause why they should not issue a distress warrant, was founded upon an affidavit, showing the refusal only but not stating the proceedings which took place before the justices, or the reason why they refused. The parties showing the cause against the rule made no affidavit:—*Held*: the affidavit must be construed in favour of the party making it, & the rule should be absolute.—*R. v. DEVERELL* (1854), 3 E. & B. 372; 23 L. J. M. C. 121; 118 E. R. 1181.

Annotations.—*Mentd.* *R. v. Kingswinford Overseers* (1854), 3 E. & B. 688; *Backhouse v. Bishopwearmouth* (1861), 7 Jur. N. S. 338.

1483. *Whether granted in first instance—Against justices.*—The rule for a mandamus to justices to hear a charge against a person brought before them is not a rule absolute in the first instance.—*Ex p. BALDWIN* (1849), 13 Jur. 563.

See, generally, MAGISTRATES.

1484. — — — — — *Ex p. PECK* (1866), 30 J. P. Jo. 388.

SUB-SECT. 3.—PEREMPTORY WRIT IN FIRST INSTANCE.

See C. O. R., r. 56.

1485. *Inappropriate when questions of fact still in debate.*—A proceeding of this kind in which in the first instance there is a peremptory mandamus issued, to which there can be no return except that of obedience to the writ is absolutely inappropriate where questions of fact are still in debate (LORD

PART VI. SECT. 6, SUB-SECT. 3.

b. *Whether court will grant—To insert name on voters list.*—*R. v.*

ALLEY (1878), 2 P. E. I. 263.—CAN.

c. — — — — — *Without notice to opposite party—Or where prosecutor guilty of*

delay.—A peremptory order for a mandamus will not be granted without notice to the opposite party, nor in a case where there has been long delay.—

Sect. 6.—Procedure: Sub-sects. 3 & 4, A., B. & C.]

HALSBURY, C.).—PRITCHARD v. BANGOR CORPN. (1888), 13 App. Cas. 241; 57 L. J. Q. B. 313; 58 L. T. 502; 52 J. P. 564; 37 W. R. 103, H. L.; *affg.* S. C. *sub nom.* **R. v. BANGOR CORPN.** (1886), 18 Q. B. D. 349, C. A.

Annotations:—Mentd. **R. v. Cooban** (1886), 56 L. J. M. C. 33; **R. v. Morton**, [1892] 1 Q. B. 39; **R. v. Douglas**, [1898] 1 Q. B. 560; **Harford v. Linakey**, [1899] 1 Q. B. 852; **Hobbs v. Morey**, [1904] 1 K. B. 74.

1486. Whether court will grant—To proceed to election.]—ANON. (1729), 1 Barn. K. B. 227; 94 E. R. 155.

1487. — To compel exercise of discretion.]—ALLCROFT v. LONDON (LORD BP.), LIGHTON v. LONDON (LORD BP.), No. 1211, *ante*.

Issue of peremptory writ after return.]—See Sub-sect. 6, D., *post*.

No return to peremptory writ.]—See Sub-sect. 5, A., *post*.

SUB-SECT. 4.—THE WRIT.

A. In General.

1488. Writ to enforce civil right—Procedure as in civil action.]—The prosecutor of any writ of mandamus may, since 1 Will. 4, c. 21, plead several matters to the return, by leave of the ct.

A mandamus the object of which is to enforce a civil right is a proceeding in aid of which, under Evidence Act, 1851 (c. 99), s. 6, a judge may grant an order for the inspection of documents by either of the litigant parties, when the return to such writ is traversed.

The writ of mandamus, where it issues to enforce a civil right, is in all its steps like an ordinary action.—**R. v. AMBERGATE, ETC., RY. CO.** (1852), 17 Q. B. 957; 18 L. T. O. S. 272; 16 Jur. 777; 117 E. R. 1548.

1489. One writ—Against same person—For separate purposes.]—R. v. ELLIS & GREENWOOD, No. 1520, *post*.

1490. — To admit several persons—To same office.]—R. v. IPSWICH (BAILIFFS) (1730), 1 Barn. K. B. 407; 94 E. R. 274.

B. Inducement.

See, now, C. O. R., rr. 209–212, Appendix C., Form 37.

1491. Need not show nature of right to office—Mandamus to restore.]—R. v. NOTTINGHAM CORPN. (1752), Say. 36; 96 E. R. 794.

1492. Must show right of applicant—To relief prayed.]—In a writ of mandamus such facts should be alleged as are necessary to show that the party applying for it is entitled to the relief prayed. Therefore where a mandamus to the Ordinary to license a curate only stated that he had been duly nominated & appointed by the inhabitants of a township to be curate of the church of P., without stating either the consent of the rector or any endowment or custom for the inhabitants to make such nomination & appointment, the ct. quashed the writ.—**R. v. OXFORD (BP.)** (1806), 7 East, 345; 3 Smith, K. B. 341; 103 E. R. 133.

Annotation:—Consd. **R. v. St. Pancras Church Trustees** (1835), 3 Ad. & El. 535.

1493. Must show authority to make order—Mandamus for disobedience.]—Where guardians sue out a writ of mandamus to parish officers for

disobedience of their order, there must be an allegation showing by what authority they claim to make the order.—**R. v. ST. PAUL & ST. NICHOLAS, DEPTFORD, OVERSEERS** (1838), 2 J. P. 743.

1494. Must state no goods upon which distress could be levied—Mandamus to corporation to pay rates — Objection taken after return.]—R. v. MARGATE PIER CO., No. 1075, *post*.

1495. Must show issue necessary—Mandamus to levy rate.]—R. v. EDLASTON (CHURCHWARDENS & OVERSEERS), No. 1355, *ante*.

1496. Must state non-compliance—Mandamus to compel completion of railway.]—A writ of mandamus to compel a co. to complete a railway must distinctly show upon the face of it that the co. are not proceeding *bond fide* under the powers & authorities of their Act, by either showing an abandonment by them of part of the line, or a total non-compliance with the terms imposed by the Act as to purchase of lands, etc. A mere statement that co. when requested have refused to purchase lands is not of itself sufficient, as such a statement is consistent with an inability on part of co. to purchase lands in portion except upon unreasonable terms.—**R. v. EASTERN COUNTIES RY. CO.** (1840), 10 Ad. & El. 531; 2 Ry. & Can. Cas. 260; 4 Per. & Dav. 46; 9 L. J. Q. B. 303; 4 J. P. 510; 113 E. R. 201.

Annotations:—Refd. **R. v. Bristol & Exeter Ry.** (1843), 4 Q. B. 162; **R. v. Halifax Road Trustees** (1848), 12 Q. B. 448. *Mentd.* **R. v. G. S. & W. Ry.** (1847), 9 L. T. O. S. 375; **Cohen v. Wilkinson** (1849), 12 Beav. 138; **R. v. L. & N. W. Ry.** (1849), 13 J. P. Jo. 762; **R. v. Ambergate, etc., Ry.** (1851), 17 Q. B. 362; **R. v. L. & N. W. Ry.** (1851), 16 Q. B. 864; **R. v. L. & Y. Ry.** (1852), 2 L. J. Q. B. 57; **York & North Mid. Ry. v. It.** (1853), 1 E. & B. 858.

1497. Where alternative modes of compliance—Must show alternative impossible.]—Railways (Clauses Consolidation Act, 1815 (c. 20), s. 46, gives an option to a railway co., where a railway crosses a turnpike road or public highway, either to carry such road over the railway, or the railway over such road, by means of a bridge of the height & width, & with the ascent or descent by that Act or the special Act in that behalf provided. The Ct. of Q. B., on the application of prosecutor, had granted a mandamus, directing the S. E. Ry. Co. to carry a public highway over their railway by means of a bridge at a particular place:—*Held*: (1) as the writ of mandamus did not give the co. the option as provided by the Act, or assign a sufficient reason why the option did not exist, or become incapable of being performed, such writ was bad in law; (2) the defect could not be cured by the return.

Upon a judgment awarding a peremptory mandamus, the costs are not those awarded at the discretion of the ct., under 1 Wm. 4, c. 21, s. 6, but are the general costs under sect. 4 of that statute (*per Cur.*).—**R. v. SOUTH-EASTERN RY. CO.** (1853), 4 H. L. Cas. 471; 21 L. T. O. S. 282; 17 Jur. 901; 1 C. L. R. 932; 10 E. R. 545, H. L.; *affg.* S. C. *sub nom.* **SOUTH EASTERN RY. CO. v. R.** (1851), 17 Q. B. 485, Ex. Ch.

Annotations:—As to (1) *Refd.* **Ireland L. G. Board v. It.**, [1903] A. C. 402. *Generally, Mentd.* **Leech v. North Staffordshire Ry.** (1860), 1 L. T. 332.

1498. Must state nature & cause of injury—For which compensation claimed—From company acting under statutory powers.]—A railway co. had lowered a road in front of a piece of land, & thereby injured its value, by impeding the access to it, & causing the necessity of additional fences,

R. v. REYNOLDS (1851), 1 I. C. L. R. 157.—**IR.**

difficulty.]—R. v. ST. NICHOLAS WITH-OUT, PARISH (1846), 10 I. L. R. 113.—**IR.**

a right to enforce all commands.]—R. v. CORK COUNTY COUNCIL, [1911] 2 I. R. 206.—**IR.**

d. — In cases of doubt or

e. — Applicant fails to establish

etc., but they had not actually touched any part of the land. On a return to a mandamus directing the co., under sect. 29 of their private Act, to summon a jury, to inquire into the injury alleged to have been sustained by appt., by reason of the lowering of the highway adjoining the land, in the course of constructing their railway:—*Semble*: the mandamus should state specifically the nature & cause of the injury complained of, & not in the general words of the Act. The ct. allowed the writ to be amended accordingly.—*R. v. EASTERN COUNTIES RY. CO.* (1841), 2 Q. B. 347; 2 Ry. & Can. Cas. 736; 1 Gal. & Dav. 589; 11 L. J. Q. B. 66; 6 Jur. 557; 114 E. R. 136.

Annotations:—*Reid. R. v. L. & N. W. Ry.* (1854), 3 E. & B. 443. *Mentd. East & West India Docks & Birmingham Junction Ry. v. Gattke* (1851), 3 Mac. & G. 155; *Re Edmundson* (1851), 17 Q. B. 87; *Glover v. North Staffordshire Ry.* (1851), 16 Q. B. 912; *Sutton Harbour Improvement Co. v. Hitchens* (1851), 1 De G. M. & G. 161; *Cale. Ry. v. Ogilvy* (1855), 25 L. T. O. S. 106; *Chamberlain v. West End of London & Crystal Palace Rly.* (1863), 2 B. & S. 605; *Beckett v. Mid. Ry.* (1867), L. R. 2 C. P. 82; *Eagle v. Charing Cross Rly.* (1867), L. R. 2 C. P. 638; *Ricket v. Met. Ry.* (1867), L. R. 2 H. L. 175; *McCarthy v. Metropolitan Board of Works* (1872), L. R. 8 C. P. 191.

1499. Must state duty to be performed public.]—

(1) A writ of mandamus must show upon the face of it that the duty ordered to be performed is a public one. If it does not, it will be quashed.

(2) If on the face of a mandamus there be no ground for the writ, the defect cannot be supplied by matter appearing in the return.—*R. v. HOPKINS* (1841), 1 Q. B. 161; *Arn. & H.* 268; 4 Per. & Dav. 550; 10 L. J. Q. B. 63; 5 J. P. 387; 113 E. R. 1091. *Annotations*:—*As to* (1) *Reid. R. v. Holloway* (1855), 24 L. T. O. S. 255. *Generally, Mentd. R. v. Kensington* (1848), 12 Q. B. 654.

1500. Must show present duty—& lapse of reasonable time—Mandamus to make sewers & works for effective drainage.]—A writ of mandamus which orders the vestry of a parish subject to the operation of the Metropolitan Management Act, 1855 (c. 120), to make immediately such sewers & works as may be necessary for effectually draining a particular part of the parish, without showing that a reasonable time has elapsed, or that there is a present duty to drain that particular part at once, or that the approval of the Metropolitan Board of Works has been obtained, is defective & cannot be supported.—*R. v. ST. LUKE'S, CHELSEA VESTRY* (1862), 1 B. & S. 903; 31 L. J. Q. B. 50; 5 L. T. 744; 26 J. P. 85; 8 Jur. N. S. 308; 10 W. R. 293; 121 E. R. 949.

Annotations:—*Consd. R. v. St. George, Hanover Square, Vestry*, [1895] 2 Q. B. 275. *Mentd. Lee District Board v. L. C. C.* (1899), 82 L. T. 306.

1501. Sufficiency of recital.]—*R. v. DEVIZES* (1708), Bull. N. P. 5th ed. 200.

Annotation:—*Mentd. R. v. Fowey Corp.* (1823), 2 L. J. O. S. K. B. 86.

C. Direction.

1502. Where direction doubtful—Onus on applicant.]—*R. v. PLYMOUTH BOROUGH* (1728), 1 Barn. K. B. 81; 94 E. R. 56; *subsequent proceedings*, 1 Barn. K. B. 130.

1503. —.]—It is at the peril of the person who desires the writ, to direct it to a proper presiding officer (FOSTER, J.).—*R. v. WIGAN CORPN.*, *R. v. CURGHEY* (1759), 2 Burr. 782; 2 Keny. 504; 97 E. R. 560.

1504. —.]—*R. v. CARMARTHEN CORPN.* (1840), 4 Jur. 365.

1505. To those only who are to do the act.]—(1) A writ of mandamus ought to be directed to the persons who are to do the act.

(2) The return to a mandamus must have the utmost possible certainty. Where the mayor of a corp. is eligible out of two capital burgesses

nominated by a part of the corp., & a mandamus issues to enforce such election, a return stating elections of the nominees to the offices of capital burgesses, & showing those elections to have been void must add that they were not elected afterwards.—*R. v. ABINGDON CORPN.* (1700), 2 Salk. 699; Holt, K. B. 441; 1 Ld. Raym. 559; 12 Mod. Rep. 308, 401; 91 E. R. 592; *sub nom. ABINGDON TOWN CASE*, Carth. 499.

Annotations:—*As to* (1) *Consd. R. v. Hoskins* (1736), Lee temp. Hard. 188. *Generally, Reid. R. v. Holmes* (1765), 3 Burr. 1641.

1506. —.]—(1) A writ of mandamus ought to be directed to the persons who are to do the act.

(2) An argumentative return upon a mandamus is bad.

It is a bad return because it is argumentative when it should be express & direct (*per cur.*).—*R. v. HEREFORD CORPN.* (1705), 2 Salk. 701; 6 Mod. Rep. 309; 91 E. R. 593.

Annotation:—*Consd. R. v. Lyme Regis* (1779), 1 Doug. K. B. 177.

1507. — Not to one person to command another.]—Writ to one to command another to do the act is ill.—*R. v. DERBY CORPN.* (1707), 2 Salk. 436; 91 E. R. 379.

1508. —.]—When a mandamus is directed to those that have & those that have not a right, the ct. will supersede it.—*R. v. NORWICH CORPN.* (1717), 1 Stra. 55; 93 E. R. 381.

1509. To persons having authority to do the act—Mandamus to corporation—Power lodged in particular persons.]—*SHARP v. LONDON CORPN.* (1714), Gilb. 255; 93 E. R. 321.

Annotation:—*Mentd. Woodcroft v. Kynaston* (1743), 9 Mod. Rep. 305.

1510. — — —.]—A mandamus directed to the mayor & burgesses, commanding them to elect & swear in a mayor "*secundum auctoritatem vestram*," is good, although the power is for the burgesses to elect & the mayor to swear in.—*R. v. TREGONY CORPN.* (1723), 8 Mod. Rep. 111, 127; 88 E. R. 87.

Annotations:—*Reid. R. v. Sparrow* (1739), 2 Sess. Cas. K. B. 184. *Mentd. R. v. Pasmore* (1789), 3 Term Rep. 199.

1511. —.]—A mandamus to restore must be directed only to the body that has power to remove; but where the power is in the mayor, aldermen *et aliis de communi concilio* if the writ is directed to the mayor, aldermen & common council it is good.—*PEES v. LEEDS CORPN.* (1725), 1 Stra. 640; 93 E. R. 751.

1512. —.]—After a mandamus has been granted, return made, & an issue thereon tried, the ct. will not quash the mandamus on grounds which were or might have been discussed on showing cause against the application for it, as, that a suggestion on which the motion was made is untrue.

Semble: (PATTESON, J.) a writ of mandamus to assess compensation for the loss of an office should be directed to the town council, & not to the corp., which latter is only empowered by Municipal Corps. Act, 1835 (c. 76), to affix the common seal to the bond for securing compensation.—*R. v. STAMFORD CORPN.* (1844), 6 Q. B. 433; 1 New Pract. Cas. 19; 3 L. T. O. S. 281; 9 J. P. 359; 8 Jur. 909; 115 E. R. 165.

Annotations:—*Consd. R. v. Bristol & Exeter Ry.* (1845), 3 Ry. & Can. Cas. 777. *Mentd. R. v. Prest* (1851), 15 Jur. 554; *Dyte v. St. Pancras Board of Grdms.* (1872), 27 L. T. 342.

1513. —.]—*R. v. WELCHPOOL CORPN.*, No. 1140, *ante*.

To all who are to do act—Including applicant for writ.]—*See Nos. 1350–1356, ante*.

1514. To churchwardens—Right of election of

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sexton in inhabitants.]—R. v. STOKE DAMEREL (MINISTER & CHURCHWARDENS), No. 996, ante.

1515. — After vacating office—Peremptory mandamus.]—A peremptory mandamus may be addressed to churchwardens after they have ceased to fill the office.—R. v. SHOULDEHAM (VICAR) (1872), 37 J. P. 310.

1516. To chapelwardens—Two wardens acting for separate districts—Of one parish.]—R. v. MARCHINGTON (CHAPELWARDENS) (1843), 1 L. T. O. S. 145.

See, further, ECCLESIASTICAL LAW.

1517. To successors in office—To revise burgess roll.]—The Ct. of Q. B. may award a writ of mandamus requiring the new mayor, & the assessors of the borough for the preceding year, to hold a ct. to revise the list of burgesses of the preceding year, which the then mayor ought to have held but neglected to hold, notwithstanding the expiration of the time specified in Municipal Corpns. Act, 1835 (c. 76), s. 18, for the holding of such ct.—ROCHESTER CORPN. v. R. (1858), E. B. & E. 1024; 27 L. J. Q. B. 434; 4 Jur. N. S. 1227; 120 E. R. 791; *sub nom.* R. v. ROCHESTER CORPN.. *Re* ST. MARGARET & ST. NICHOLAS PARISHES, 32 L. T. O. S. 31; 22 J. P. 608; 6 W. R. 838, Ex. Ch.; *affg.* S. C. *sub nom.* R. v. ROCHESTER CORPN. (1857), 7 E. & B. 910.

Annotations:—*Consd.* R. v. Monmouth Corpn., R. v. Bolton Corpn. (1870), L. R. 5 Q. B. 251; R. v. Farquhar (1874), L. R. 9 Q. B. 258; R. v. Hanley (Revising Barrister), R. v. Stoke-on-Trent (Town Clerk), [1912] 3 K. B. 518. *Refd.* Seal v. R. (1457), 27 L. J. Q. B. 139; *lt. v.* North Berley Overseers (1858), E. B. & E. 519; Hunt v. Hibbs (1860), 5 H. & N. 123; Scott v. Durant (1865), 18 C. B. N. S. 205; R. v. Allen & Bird (1872), 27 L. T. 707; *Ex p.* Keay (1891), 56 J. P. 470. *Mentd.* Christopherson v. Lotinga (1864), 15 C. B. N. S. 809; Henry v. Armitage (1882), 48 L. T. 576.

1518. To Court of Passage—Mandamus to tax costs.]—The registrar of the Ct. of Passage is the proper person to whom to direct a rule for a writ of mandamus to tax costs.—KING v. HAWKESWORTH (1879), 4 Q. B. D. 371; 48 L. J. Q. B. 484; 41 L. T. 411; 27 W. R. 660, D. C.

Annotations:—*Refd.* *Ex p.* Spelman, [1895] 2 Q. B. 174. *Mentd.* l'oyser v. Minors (1881), 50 L. J. Q. B. 555.

1519. To justices—No direction to justices not taking part in decision.]—If certain magistrates attending at special sessions do not take part in a decision of the sessions, they ought not to be brought before the ct. on an application for a mandamus in respect of that decision.—R. v. WILTS JJ. (1840), 8 Dowl. 717.

Annotation:—*Mentd.* R. v. Arnould, Berkshire JJ. (1857), 22 J. P. 545.

1520. — Not to all justices taking part in decision.]—(1) One writ of mandamus may go to compel the issue of two warrants of distress for two rates against the same individual.

(2) It is not necessary that the mandamus should be directed against all the justices who refused the warrants.

(3) Where justices had refused a warrant of distress for one rate on Aug. 25, & another for a different rate on Dec. 29, & the mandamus was applied for as to both in Hilary term following:—*Held:* the application was in time as to both rates.—R. v. ELLIS & GREENWOOD (1842), 2 Dowl. N. S. 361; 12 L. J. M. C. 20; 7 J. P. 179; 7 Jur. 108.

See, generally, MAGISTRATES.

To lord of manor & steward.]—See COPYHOLDS, Vol. XIII., p. 136, Nos. 1706, 1707.

To corporations in wrong name.]—See CORPORATIONS, Vol. XIII., pp. 318, 319, 343, Nos. 515, 536, 809.

To county court.]—See COUNTY COURTS, Vol. XIII., p. 554, No. 1115, 1117.

To poor law officials.]—See POOR LAW.

D. Mandate.

1521. Court will not mould—After issue—& award amended peremptory mandamus.]—R. v. ST. PANCRAS CHURCH TRUSTEES, No. 1660, *post*.

1522. — — — — —.]—R. v. KIDWELLY & LLANELLY CANAL & TRAMROAD CO., No. 1695, *post*.

1523. — — — — —.]—Though the rule for a writ of mandamus may be moulded by the ct., the writ itself cannot, & if it command the doing certain things, some of which they to whom it is directed are not bound to do, it is bad.—R. v. TITHE COMRS. (1849), 14 Q. B. 459; 19 L. J. Q. B. 177; 14 L. T. O. S. 348; 14 J. P. 142; 14 Jur. 290; 117 E. R. 179.

Annotations:—*Expld.* Julius v. Oxford Bp. (1880), 5 App. Cas. 214. *Refd.* R. v. Kidwelly & Llanelly Canal & Tramroad Co. (1850), 15 L. T. O. S. 223; R. v. East & West India Docks, *etc.* Ry. (1853), 2 E. & B. 466. *Mentd.* Jones v. Harrison (1850), 20 L. J. Ex. 166; Macdonald v. Paterson (1851), 11 C. B. 755; R. v. Mitchell, *Ex p.* Livesey, [1913] 1 K. B. 561.

1524. Need not direct return.]—A mandamus to a mayor to deliver the ensigns of his office to his successor, is good, though the words, "or signify to us cause to the contrary, etc.," be omitted.—R. v. OWEN (1696), 5 Mod. Rep. 314; Comb. 399; Holt, K. B. 190; Skin. 669; 87 E. R. 677.

Annotations:—*Refd.* R. v. Hudson (1845), 4 L. J. O. S. 353. *Mentd.* Owen v. Saunders (1696), 1 Ld. Raym. 158.

1525. Must follow form of rule—Amendment of rule.]—A motion was made to supersede a writ of mandamus, for being drawn up differently from the rule which it was granted upon:—*Held:* the mandamus must be drawn up according to the form of the rule, & amending the rule would not make the mandamus right, which was wrong at first.—R. v. WISEMAN (1730), 1 Barn. K. B. 405; 94 E. R. 273.

1526. — — — — —.]—Where a rule has been obtained for a mandamus to issue, & the mandamus is taken out in other terms than are warranted by the rule, & differing not merely by adding things incidental to a mandamus, but materially enlarging the terms, the ct. will quash the mandamus, notwithstanding, perhaps, they would have granted a rule as large if it had been applied for upon the same affidavits, & they will not, upon motion to quash it, amend the rule, to support the mandamus.—R. v. WATER EATON (LORDS & STEWARDS OF THE MANOR OF) (1804), 2 Smith, K. B. 54.

1527. — — — — —.]—R. v. EAST LANCASHIRE RY. CO., No. 1436, *ante*.

1528. — — — — —.]—R. v. MANCHESTER, BURY & ROSENDALE RY. CO. (1846), 7 L. T. O. S. 45; 10 J. P. Jo. 245.

1529. Must not command acts to be done—Not within powers of defendant.]—R. v. TUCKER, No. 1450, *ante*.

1530. — — — — — Contrary to spirit of statute.]—A Railway Act, enacted that the owner of any engine which he was desirous of using on the line might send a notice to that effect to the co., & of the place where it was to be seen, & the co. were commanded to send their engineer or other agent to inspect the engine and report thereon, & if the

PART VI. SECT. 6, SUB-SECT. 4.—D.

1. Must follow form of rule—Or quashed on motion.]—A mandamus,

issued upon a rule obtained for that purpose, must be consistent with & authorised by the rule, otherwise it may be quashed on motion before the

return to the mandamus is filed.—R. v. MCLEAN (1849), 5 U. C. R. 473.—OAN.

report be favourable, the co. should give a certificate of its fitness, after which it might be used upon the line:—*Held*: a mandamus would not lie to obtain a certificate of the fitness of the engine, & a mandamus which commanded this as well as the inspection of the engine was too large.

The mandamus called upon the co. to grant their certificate & their approval before the engineer had granted his, in opposition to the spirit of the Act, therefore the writ which called for a certificate that the engine was a fit & proper one, was clearly bad (LORD DENMAN, C.J.).—*R. v. SOUTH EASTERN RY. Co.* (1847), 8 L. T. O. S. 385.

1531. Confined to matters brought before court on motion.]—The ct. will not allow a mandamus directing matters to be done which are not brought before the ct. on the motion of the writ, & if such a mandamus issue it will be quashed.—*R. v. IPSWICH & BURY ST. EDMUNDS RY. Co.* (1849), 12 L. T. O. S. 374.

1532. Confined to recital of facts in dispute.]—*R. v. DUDLEY IMPROVEMENT ACT COMRS.* (1848), 10 L. T. O. S. 372; 12 J. P. Jo. 54.

1533. Whether time of performance to be specified.]—ANON. (1733), 2 Barn. K. B. 236; 94 E. R. 471.

1534. Whether mode of performance to be specified—Writ commanding removal of public nuisance—Discretion as to mode of removal.]—(1) The directors of a dock co. altered several sewers so as to discharge them considerably under the surface of the water in a floating harbour, but the sewage there discharged was so offensive as to be a nuisance to the neighbourhood. A writ of mandamus commanded the directors to make such alterations & amendments in the sewers as were necessary in consequence of a floating harbour:—*Held*: this was in the proper form, & that it was neither requisite nor proper to call upon the co. to make any specific alteration, the mode of remedying the evil being left to their discretion by the Act of Parliament governing the making of the harbour.

(2) The making of a return to a mandamus does not preclude deff. from taking objections to the writ on a motion for a peremptory mandamus.

(3) The return is argumentative & inconclusive & averring no certain matter upon which the ct. can decide (BAYLEY, J.).—*R. v. BRISTOL DOCK Co.* (1827), 6 B. & C. 181; 9 Dow. & Ry. K. B. 309; 4 Dow. & Ry. M. C. 327; 5 L. J. O. S. M. C. 51; 108 E. R. 420.

Annotations:—As to (1) Refd. R. v. Marshland Smeeth & Fen District Comrs., Ex p. Whitmore (1919), 89 L. J. K. B. 116. *Generally, Refd. R. v. S. E. Ry.* (1851), 15 Jur. 871; *York & Midland Ry. v. R.* (1853), 17 Jur. 690; *Delamere v. R.* (1867), L. R. 2 H. L. 419; *Lee District Board v. L. C. C.* (1899), 82 L. T. 306.

1535. Whether general terms sufficient—Necessary to specify particular act.]—After argument & judgment on a return to a mandamus, the ct. will, as a general rule, give costs to the party succeeding, under 1 Will. 4, c. 21, s. 6.

Semle: a mandamus requiring a railway co. to make a bridge for the purpose of carrying the railway over a public carriage road conformably to the provisions of their local Act should require some particular thing to be done to the bridge in such a case, & not in general terms, that it should be made conformable to the provisions of the Act.—*R. v. EASTERN COUNTIES RY. Co.* (1842), 2 Q. B. 569; 3 Ry. & Can. Cas. 22; 2 Gal. & Dav. 1; 11 L. J. Q. B. 178; 6 Jur. 820; 114 E. R. 224.

1536. —“To take necessary & legal measures” —Unaccompanied by order of indemnity for costs.]—A writ of mandamus commanding resps. to

“take the necessary & legal measures & proceedings for obtaining and recovering payment” of certain sums of money, & to pay over a portion to appts. is valid, the words admitting the construction that resps. are merely ordered to take the proper steps for obtaining payment, but are not absolutely commanded to bring an action. It is not necessary in such a writ to offer an indemnity or to point out the nature of the proceedings to be taken.

(2) The mandatory part of a writ of mandamus may be very general, but the return must be very minute in showing why the party did not do what he was commanded.

(3) The duty imposed is a plain legal duty, & though a ct. of equity may have concurrent power to enforce its performance, that does not take away the common law right to a mandamus, which is the proper mode by which one who has an interest in the performance of a legal duty enforces the performance of that duty (BLACKBURN, J.).—*R. v. SOUTHAMPTON PORT COMRS.* (1870), L. R. 4 H. L. 449; 39 L. J. Q. B. 353; 23 L. T. 111; 35 J. P. 52; 18 W. R. 1171, H. L.

Annotations:—As to (1) Refd. Brown v. Montreal (Curé) (1874), L. R. 6 P. C. 157. *Generally, Mentd. Lawless v. Sullivan* (1881), 6 App. Cas. 373.

1537. May be in alternative.]—A rule *nisi* for a mandamus to a railway co. was granted, commanding them to affix their corporate seal to a deed, or to make a road.—*R. v. GREAT NORTHERN RY. Co., Ex p. WARD* (1851), 17 L. T. O. S. 147; 15 J. P. Jo. 387.

1538. Mandamus to appear, produce & explain accounts to auditors—Cannot direct appearance at time & place auditors should appoint—Contrary to statute.]—*R. v. ST. PANCRAS CHURCH TRUSTEES*, No. 1660, *post*.

1539. When bad in part—Whether void in toto—Obligation not imposed by statute.]—A mandamus had issued to the co. founded on a clause in their special Act which required them to make proper watering places for cattle in all cases where, by means of the railway the cattle of neighbouring landowners should be deprived of access to their ancient watering places, & to supply the same at all times with water. The writ recited that by means of the railway the ancient watering places on certain specified closes had been made inaccessible to the cattle of the landowners, & it commanded the co. to make several new watering places on certain specified portions of the closes & to supply the same, when made, at all times with water:—*Held*: the Act did not necessarily require the co. to make several watering places in the closes of individual proprietors, & it did not appear in this case that one might not have been sufficient, & the mandamus was void, as commanding one thing which the stat. did not enjoin.—*YORK & NORTH MIDLAND RY. Co. v. R.* (1846), 14 Q. B. 473, n.; 7 L. T. O. S. 346; 117 E. R. 184, n.; *sub nom. YORK & NORTH MIDLAND RY. Co. v. MILNER*, 3 Ry. & Can. Cas. 773; 15 L. J. Q. B. 379, Ex. Ch.

1540. —.]—A railway co. gave notice to landowners, under Lands Clauses Consolidation Act, 1845 (c. 18), s. 18, that they required to purchase part of certain premises. The owners of the premises thereupon gave notice to the co., under sect. 92, that they required them to purchase the whole of the premises, & a mandamus was obtained commanding the co. to issue their precept for summoning a jury to assess compensation for the whole:—*Held*: although sect. 92 protected the owners from being obliged to sell a part, it did not compel a co. wanting a part only to take

Sect. 6.—Procedure: Sub-sect. 4, D., E., F. & G.; sub-sect. 5, A. & B.]

the whole, & the mandamus, having claimed the whole, could not go for a part only.—*R. v. LONDON & SOUTH WESTERN RY. CO.* (1848), 12 Q. B. 775; 5 Ry. & Can. Cas. 669; 17 L. J. Q. B. 326; 11 L. T. O. S. 433; 12 Jur. 973; 116 E. R. 1061.

Annotation:—Reid. Ex p. Quicke (1865), 12 L. T. 580.

1541. ———.]—*R. v. TITHE COMRS.*, No. 1523, *ante*.

1542. ———.]—By a special railway Act, which also incorporated Railways Clauses Consolidation Act, 1845 (c. 20), it was declared to be "lawful for the railway co. to construct the bridge for carrying any road over the railway of the height & span & in the manner shown on the section deposited" with the clerk of the peace, as prescribed by the Act:—*Held*: the co. were not bound to construct the road forming the approach to the bridge strictly according to the rates of inclination shown in the section deposited, & a mandamus requiring them so to construct it was bad for excess.

This being a peremptory mandamus, it lies upon prosecutors to show that all that is commanded by this mandamus is the duty imposed by law, for, if in any part a writ of mandamus command that which is unlawful, the whole of the proceedings must be set aside (*LORD CAMPBELL, C.J.*).—*R. v. CALEDONIAN RY. CO.* (1850), 16 Q. B. 19; 20 L. J. Q. B. 147; 16 L. T. O. S. 280; 15 Jur. 396; 117 E. R. 782.

Annotations:—Consd. R. v. East & West India Docks & Birmingham Junction Ry. (1853), 22 L. J. Q. B. 380.

Reid. R. v. L. & N. W. Ry. (1851), 6 Ry. & Can. Cas. 634. *Mentd. Ware v. Regent's Canal Co.* (1855), 3 De G. & J. 212; *A. G. v. Tewkesbury & Malvern Ry.* (1863), 1 De G. J. & Sm. 423; *Taft Vale Ry. v. Cardiff Ry.*, [1917] 1 Ch. 299.

E. Service of.

See, now, C. O. R., rr. 54, 55.

1543. Upon person ordered to make return.]—A mandamus should be delivered to him who is to make the return.—*R. v. EXETER CORPN.* (1698), 12 Mod. Rep. 251; 88 E. R. 1300.

1544. By copy—Original not shown.]—The ct. will not set aside service of a copy of a writ of mandamus on the ground that the original writ was not served, nor shown to the party on whom the copy was served.—*R. v. BIRMINGHAM & OXFORD JUNCTION RY. CO. & BIRMINGHAM, WOLVERHAMPTON & DUDLEY RY. CO.* (1853), 1 E. & B. 273; 22 L. J. Q. B. 195; 20 L. T. O. S. 190; 17 Jur. 24; 118 E. R. 446.

F. Defective Writs—Amendment.

1545. Whether cured by admissions on the return.]—Where a party's qualification to be admitted to the freedom of a town does not sufficiently appear by the writ of mandamus, the defect may be cured by a return admitting the qualification.—*R. v. WHISKIN* (1737), Andr. 1; 95 E. R. 269.

1546. ———.]—*R. v. HOPKINS*, No. 1499, *ante*.

1547. ———.]—*LONDON CORPN. v. R.*, No. 1680, *post*.

1548. ———.]—*R. v. SOUTH-EASTERN RY. CO.*, No. 1497, *ante*.

Proceedings on return to writ, *see* Sub-sect. 5, *post*.

1549. May be cured by verdict.]—If there is in a writ of mandamus a defective statement of a valid claim, but that statement renders it necessary to establish facts which, if established, would support the claim in the writ, the defectiveness, though it might be fatal on demurrer, is cured by the verdict.—*DELAMERE (LORD) v. R.* (1867), L. R. 2 H. L. 419; 36 L. J. Q. B. 313; 17 L. T. 1, H. L.; *affg. S. C. sub nom. R. v. DELAMERE (LORD), ETC. RIVER WEAVER NAVIGATION TRUSTEES* (1865), 29 J. P. 500, Ex. Ch.

1550. Amendment—Not after return made.]—The ct. will not amend a mandamus after a return has been made to it.—*R. v. STAFFORD CORPN.* (1792), 4 Term Rep. 689; 100 E. R. 1247.

1551. ——— Technical defects.]—An amendment of a technical defect in a mandamus should be permitted by defts. as a matter of course, & they ought not to compel prosecutor to apply to the ct.—*R. v. MARCHINGTON (CHAPELWARDENS)* (1844), 2 L. T. O. S. 327.

1552. ——— Power of court to amend.]—*R. v. DENT, ETC., WEST RIDING J.J.* (1854), 18 J. P. Jo. 392.

1553. ——— Writ improperly tested—Mistake of officer.]—*R. v. CONYERS*, No. 1021, *ante*.

1554. ——— Misdescription in title—Of company to which writ directed.]—Where a co. was incorporated as the "D. S. & W. Junction Railway," & a mandamus had issued directed to them by the name of the "D. S. & W. Junction Ry. Co.," the ct., upon the argument of the mandamus, ordered the name to be amended.—*R. v. DERBYSHIRE, ETC. RY.* (1854), 3 E. & B. 784; 23 L. J. Q. B. 333; 23 L. T. O. S. 155; 18 Jur. 1054; 2 C. L. R. 1653; 118 E. R. 1335.

Annotation:—Mentd. Addison v. Tate (1855), 11 Exch. 250.

G. Quashing.

Defective writs—Amendment of.]—*See* Sub-sect. 4, F., *ante*.

1555. By motion—On notice.]—Notice of motion must be given to quash a writ.—*ANON.* (1743), 1 Wils. 30; 95 E. R. 475.

Annotation:—Reid. R. v. Middlesex J.J. (1838), 7 L. J. M. C. 68.

1556. ——— For order nisi without notice.]—It is not now necessary to give notice of a motion to quash a writ of mandamus.—*R. v. MIDDLESEX J.J.* (1838), 7 L. J. M. C. 68.

See, now, C. O. R., r. 235.

1557. After return day.]—*R. v. WILLINGFORD J.J.* (1732), 2 Barn. K. B. 132; 94 E. R. 402.

Annotation:—Folld. R. v. Witchurch (1734), 2 Barn. K. B. 447.

1558. ———.]—*R. v. WITCHURCH* (1734), 2 Barn. K. B. 447; 94 E. R. 610.

1559. ——— Grounds which might have been shown earlier.]—*R. v. STAMFORD CORPN.*, No. 1512, *ante*.

1560. On motion for attachment for disobedience to writ.]—*R. v. LEDGARD*, No. 1566, *post*.

For defects in direction.]—*See* Sub-sect. 4, C., *ante*
For defects in mandatory part.]—*See* Sub-sect. 4, D., *ante*.

1561. For irregularity—Commanding perform

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g. Amendment—Irregularity—Variation between writ & order—Whether power to amend.]—There is no jurisdiction to amend a writ that varies from the command contained in the order allowing its issue unless the order giving leave to issue is similarly amended either prior to or contemporaneously with the amendment of the writ.—R. v. CORK COUNTY COUNCIL, [1911] 2 I. R. 206.—IR.

poraneously with the amendment of the writ.—R. v. CORK COUNTY COUNCIL, [1911] 2 I. R. 206.—IR.

PART VI. SECT. 6, SUB-SECT. 4.—G.

h. Mere informality is not ground for quashing the writ.]—R. v. TURNPIKE TRUST COMRS. (1844), 1 U. C. R. 193.—CAN.

k. For irregularity—Command varying from order for issue of writ.]—Where the command in a writ varies from that contained in the order allowing the issue of such writ, it is matter of course to quash the writ varying.—R. v. CORK COUNTY COUNCIL [1911] 2 I. R. 206.—IR.

ance of act—Not within powers of defendant.]—*R. v. TUCKER*, No. 1450, *ante*.

1562. — Not allowing sufficient time between teste & return.]—*R. v. ST. ANDREW & ST. GEORGE* (GOVERNORS, ETC.), No. 1574, *post*.

Whether objections to writ maintainable after return.]—*See* Sub-sect. 6, C., *post*.

SUB-SECT. 5.—RETURN TO THE WRIT.

A. In General.

1563. Form of.]—A return to a mandamus first traversed the general allegations of the writ, then it expanded those traverses by showing in detail the facts on which they were to rest:—*Held*: such a mode of pleading was not calculated to prejudice, embarrass, or delay the fair trial of the case.—*R. v. SADDLERS' CO.* (1853), *Bail Ct. Cas.* 183; 22 L. J. Q. B. 451; 21 L. T. O. S. 159; 1 W. R. 448; 1 C. L. R. 523.

1564. Need not be on oath.]—*ANON.* (1665), 1 Sid. 257; 82 E. R. 1091.

1565. Filed after death of officer.]—*Semble*: a return to a mandamus filed after the death of the officer is irregular.—*R. v. HOLMES* (1765), 3 Burr. 1641; 97 E. R. 1024.

1566. Cannot be made to peremptory writ.]—(1) The ct. will not hear a return to a peremptory mandamus, though stating an attempt made to comply with the writ, & causes by which it has been frustrated.

A writ of mandamus issued to the mayor, aldermen, & burgesses of a borough to pay instalments due under a bond given to secure compensation to the town clerk. A return was made, & a peremptory mandamus awarded. On disobedience of that writ an attachment for contempt was moved for. On cause being shown against that rule:—*Held*: (2) the ct. would allow an objection to be taken that the writ of mandamus was defective in directing the compensation to be made out of the wrong fund, & would quash the writ; (3) the attachment could not be granted against the "mayor, aldermen & burgesses" of the borough, but the particular individuals, who had been concerned in disobeying the writ must be named in the rule for the attachment.—*R. v. LEDGARD* (1841), 1 Q. B. 616; 113 E. R. 1268; *sub nom. R. v. POOLE CORPN.*, 1 Gal. & Dav. 728; 10 L. J. Q. B. 198.

Annotations:—*As to* (2) *Refd. R. v. East & West India Docks & Birmingham Junction Ry. Co.* (1853), 1 C. L. R. 496. *As to* (3) *Apprvd. R. v. Poplar H. C.* (No. 2), [1922] 1 K. B. 95. *Generally, Mentd. R. v. Grimshaw* (1847), 11 Jur. 965.

1567. —.]—There cannot be a return to a peremptory mandamus.—*R. v. HUDSON* (1845), 9 Jur. 345.

1568. Not a pleading—Cannot be struck out—*R. S. C.*, Ord. 25, r. 4.]—A return to a writ of mandamus is not a pleading & cannot therefore be struck out under *R. S. C.*, Ord. 25, r. 4.—*R. v. CHESHUNT LOCAL BOARD*, [1884] W. N. 78; *Bitt. Rep. in Ch.* 139.

1569. By justices—Court will not direct mode.]—*R. v. MARRIOTT*, No. 1653, *post*.

1570. Time for—Fourteen days between teste & return.]—*R. v. ST. ANDREW & ST. GEORGE* (GOVERNORS, ETC.), No. 1574, *post*.

By corporation—Whether under corporate seal.]

PART VI. SECT. 6, SUB-SECT. 5.—B. 1. Mandamus to member of corporation—Insufficient to deny existence of corporation.]—*R. v. BALKWELL* J.—VOL. XVI.

(1842), 6 O. S. 297.—CAN.

1571 i. Mandamus to corporation—Return by it under seal—Not by warden.]—Where a mandamus issued directed

—*See* CORPORATIONS, Vol. XIII., p. 284, Nos. 164–167.

— Variance with writ in name of corporation.]—*See* CORPORATIONS, Vol. XIII., p. 283, No. 154.

B. By Whom made.

See, now, C. O. R., rr. 63, 64.

1571. Mandamus to corporation—Return by mayor on behalf of majority of members—Liability for false return.]—A return to a mandamus directed to a corporation, made by the mayor in the name of the major part of the members without their consent, is a false return for which an information lies against the mayor.—*R. v. ABINGDON CORPN.* (1699), 12 Mod. Rep. 308; 2 Salk. 431; *Holt, K. B.* 440; 88 E. R. 1340; *sub nom. ABINGDON TOWN CASE*, *Carth.* 499; *subsequent proceedings* (1700), 1 Ld. Raym. 559.

Annotations:—*Refd. R. v. Hoskins* (1736), *Lee temp. Hard.* 188. *Mentd. R. v. Holmes* (1765), 3 Burr. 1641.

1572. —.]—A mandamus was granted to the mayor, etc. of N. It was moved, that the sense of the mayor differed from the majority of the corpn., & that he would execute the writ, whereas the corpn. were for returning an excuse, etc. & it was prayed that the mayor might be ordered to deliver the writ to the rest of the corpn.:—*Held*: the motion would be refused for he was the head & principal, & proceedings might be taken against him.—*R. v. NORWICH CORPN.* (1700), 2 Salk. 432; 91 E. R. 375.

Annotations:—*Refd. R. v. Weeks* (1733), *Kel. W.* 290; *R. v. Hoskins* (1736), *Lee temp. Hard.* 188.

—.]—*See, CORPORATIONS*, Vol. XIII., pp. 319, 421, Nos. 536, 1410.

1573. Bailiffs after vacating office.]—*R. v. CLITHEROE TOWN* (1704), 6 Mod. Rep. 133; 87 E. R. 889.

Annotation:—*Mentd. R. v. Montacute* (1750), 1 Win. Bl. 60.

1574. Mandamus to public body—Members may not make separate returns.]—(1) The rule of practice, that there must be eight days between the teste & return of a writ of mandamus, is applicable, where a mandamus, absolute in the first instance, is directed to governors & directors of the poor of a district, under a local Act, to pay money from the poor rates, for their proportion of expenses incurred by the guardians of a union under Poor Law Amendment Act, 1834 (c. 76).

(2) If the parties who obtain such writ make it returnable at an earlier day, without the leave of the ct., the ct., on the objection being brought to their knowledge, will quash the writ of their own act.

(3) *Semble*: if there is a difference of opinion amongst the directors & governors, as to obeying the mandamus, or making a return thereto, some of them cannot make a separate return, or apply to set aside the writ for irregularity.—*R. v. ST. ANDREW & ST. GEORGE* (GOVERNORS, ETC.) (1837), 7 Ad. & El. 281; 6 L. J. M. C. 160; 1 J. P. 168; 112 E. R. 477.

1575. Return by third party—Where not prejudicial to prosecutor.]—A rule for a mandamus to a magistrate, commanding him to issue a warrant of distress upon the goods of A., who showed cause against the rule, was made absolute, & a return was subsequently made. The ct. allowed A. to amend the return, no loss of time or other injury being occasioned thereby to prosecutor, but not to file a separate return.—*PAYNTER v. R.* (1845),

to a municipality, the return should be made under seal & not by the warden.—*R. v. CHARLOTTE MUNICIPALITY* (1883), 22 N. B. R. 636.—CAN.

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10 Q. B. 908; 116 E. R. 344; *sub nom.* R. v. PAYNTER, 14 L. J. M. C. 182; 5 L. T. O. S. 240; 10 J. P. 21; 9 Jur. 928; *subsequent proceedings, sub nom.* PAYNTER v. R. (1847), 10 Q. B. 908, 914, Ex. Ch.

1576. — *Where no bonâ fide interest.*—Where a mandamus was issued to justices commanding them to issue a distress warrant against G. for non-payment of the poor rate, the ct. refused, in the exercise of the discretion given by 1 Will. 4, c. 21, s. 4, to permit G. to make the return, & conduct the proceedings in the names of the justices, no substantial objection being made by him to the rate, & his conduct in opposing it not appearing to be *bonâ fide*.—R. v. CHEEK (1817), 9 Q. B. 942; 16 L. J. M. C. 65; 8 L. T. O. S. 385; 11 J. P. 600; 115 E. R. 1536; *sub nom.* CHEEK v. R., 11 Jur. 86.

C. What constitutes a Good Return.

(a) *In General.*

1577. *General requisites.*—The return to a mandamus must not allege inconsistent causes, must not be argumentative, & must state, clearly & positively, that the parties against whom it was issued have performed all that it directs, that it is impossible to do so, or show some sufficient & legal reason why they ought not to be compelled to comply with its injunctions.

Certain comrs. returned as a reason for not considering the claims of complainant, that it was impossible to settle & agree upon the amount of the compensation to which he was entitled until he had furnished further evidence, but did not state that they had met for the purpose of considering those claims & receiving that evidence, & as further excuse, objected to the legality of complainant's notice, & denied his right to any compensation whatever:—*Held*: the return would be quashed as insufficient, inconsistent, & argumentative, & a peremptory mandamus awarded.—TERROTT v. BERWICK HARBOUR COMRS. (1827), 5 L. J. O. S. M. C. 135.

1578. *Must be certain—Not argumentative.*—Returns to writs of mandamus must be certain & definite, not argumentative.—R. v. STEPHENS (1681), T. Jo. 177; 84 E. R. 1205.
Annotation:—*Consd.* R. v. Hereford Corpn. (1704), 6 Mod. Rep. 309.

1579. —.—R. v. HEREFORD CORPN., No. 1506, *ante*.

1580. —.—R. v. CANTERBURY CORPN. (1726), 1 Stra. 674; 11 Mod. Rep. 403; 93 E. R. 774.

Annotation:—*Refd.* Roberts v. London Corpn. (1882), 46 L. T. 633.

1581. —.—R. v. BRISTOL DOCK CO., No. 1534, *ante*.

1582. —.—R. v. ABINGDON CORPN., No. 1505, *ante*.

1583. —.—R. v. LONG (1728), 1 Barn. K. B. 82; 94 E. R. 56.

1584. —.—R. v. NOTTINGHAM JJ. (1731), 2 Barn. K. B. 56; 94 E. R. 353.

1585. —.—It is the duty of the person to whom a mandamus is directed to obey the writ, or to return a cause for not obeying it in such precise terms that the truth thereof may be tried

in an action for a false return, or that, if the truth of the cause returned be admitted, the ct. may be able to judge of the goodness thereof (RYDER, C.J.).—R. v. STIRLING (1755), Say. 174; 96 E. R. 842.

1586. —.—The particular facts must be precisely stated on a return to a mandamus.—R. v. LIVERPOOL CORPN. (1759), 2 Burr. 723; 2 Keny. 424; 97 E. R. 533.

Annotations:—*Mentd.* R. v. Saddlers' Co. (1861), 3 E. & E. 72; J. C. v. Soc. of Contributors to Widows' Fund of the Faculty of Procurators in Glasgow, [1908] A. C. 182.

1587. —.—R. v. SOUTHAMPTON PORT COMRS., No. 1536, *ante*.

— *To mandamus to restore to office.*—See No. 1315, *ante*.

1588. *Sufficient if suggestion traversed.*—R. v. LOWTON PARISH (1719), 11 Mod. Rep. 301; 88 E. R. 1053.

1589. —.—R. v. PENRICE (1745), 2 Stra. 1235; 93 E. R. 1153.

Annotations:—*Refd.* R. v. Lyme Regis (1779), 1 Doug. K. B. 79; R. v. L. & N. W. Ry. (1851), 16 Q. B. 864.

1590. —.—R. v. DOVER CORPN., No. 1638, *post*.

1591. *Must not be illusory or contumacious.*—R. v. NORTH KELSEY PARISH BURIAL BOARD (1892), Times, March 22nd, D. C.

1592. *Return alleging compliance—Order to execute works “forthwith.”*—A statute directed that a sum of money should be paid to certain comrs., who were to execute all such works as should be deemed expedient for putting certain banks & bridges in a permanent state of stability, & for constructing the forelands & slopes of the banks, as far as practicable, upon one uniform system. By mandamus, reciting this clause, & that the money had been paid to the comrs., they were ordered to proceed to put the banks forthwith in a permanent state of stability & security, & to construct the forelands & slopes of the banks, as far as practicable, upon one uniform system. It was returned that the comrs. had from time to time, at all times from the passing of the Act hitherto, proceeded to execute all such works “as should be, or were, from time to time deemed necessary, proper, or expedient for putting the banks in a permanent state of stability & security, & for constructing the forelands & slopes of the banks, as far as practicable, upon one uniform system.”—*Held*: this was an insufficient return, & a peremptory mandamus would be awarded.

The ct. does not by the word forthwith mean to command them to do every thing instantly, but to set about the works directly & to do what they can. If they had done all they could they should have said so, but this they do not say (FATTESON, J.).—R. v. OUZE BANK COMRS. (1835), 3 Ad. & El. 544; 111 E. R. 521.

Annotation:—*Refd.* R. v. Marshland Smeeth & Fen District Comrs., [1920] 1 K. B. 155.

1593. — *Plaint proceeded with in obedience to writ—No further proceedings possible—Not contradictory or repugnant.*—To a mandamus to the lord & steward of a manor to hear a plaint it was returned that in 1835 the plaint was set aside & annulled for certain errors, stated in the return; that afterwards, in 1838, in obedience to the writ, defts. heard the plaint again, when, for the same errors & others, stated in the return it was adjudged that the plaint had been rightly set aside in 1835

PART VI. SECT. 6, SUB-SECT. 5.—
C. (a).

m. *Certainty to a certain intent generally sufficient—If not argumentative.*—R. v. DUBLIN CORPN. (1826), Batt. 628; Welsh Reg. Cas. 81.—IR.

n. *Sufficient if grounds are stated for the exercise of discretion—Claimed but not existing.*—R. v. DUBLIN TRINITY COLLEGE (PROVOST & FELLOWS) (1835), 3 Ir. L. Rec. N. S. 150.—IR.

o. *Insufficient unless reasonable excuse is offered for neglect of a statutory duty.*—R. v. TUAM UNION GUARDIANS OF THE POOR (1846), 9 L. L. R. 320.—IR.

& that they could not take further cognisance of the plaint; that therefore they could not proceed in the plaint as by the writ they were commanded:—*Held*: (1) the return was not contradictory on the ground that it stated both that the plaint had been proceeded with in obedience to the writ, & that it could not be so proceeded with; (2) the return showed that judgment had been given, & this ct. could not review it.—*R. v. OLD HALL (LORD OF THE MANOR)* (1839), 10 Ad. & El. 248; 2 Per. & Dav. 515; 3 Jur. 868; 113 E. R. 96; *sub nom.* *R. v. GODFREY*, 8 L. J. Q. B. 243.

1594. Return applying to date of return or teste of writ—Not to time when original application made.—*Qu.*: whether a return to a mandamus is sufficient, which applies to the date of the return or the teste of the writ, but not to the time when the original application was made to do the act commanded by the writ.—*R. v. KENSINGTON* (1846), 6 L. T. O. S. 295; *subsequent proceedings* (1848), 12 Q. B. 654.

(b) *Several Causes for Non-compliance alleged.*

1595. All consistent causes may be returned.—A return to a mandamus may rely upon several independent causes. If those causes are contradictory the return is void.—*R. v. NORWICH CORPN.* (1706), 2 Ld. Raym. 1244; 2 Salk. 436; Holt, K. B. 444; 92 E. R. 320.

Annotations:—*Reid. R. v. Pomfret Corpn.* (1712), 10 Mod. Rep. 107; *R. v. Old Hall* (1839), 10 Ad. & El. 248. *Mentd. R. v. Weeks* (1734), Kel. W. 290; *R. v. Hoskins* (1736), Lee temp. Hard. 188; *R. v. London Corpn.* (1832), 3 B. & Ad. 255.

1596.—*WRIGHT v. FAWCETT* (1767), 4 Burr. 2041; 98 E. R. 63.

Annotations:—*Reid. R. v. New Windsor Corpn.* (1845), 7 Q. B. 908. *Mentd. R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 404.

1597.—*Though some bad & some good.*—If a return to a mandamus consist of several independent matters not inconsistent with each other, but part of them good in law, & part bad, the ct. may quash the return as to such part only as is bad, & put prosecutor to plead to or traverse the rest. Where two causes returned are inconsistent, the whole is bad.—*R. v. CAMBRIDGE CORPN.* (1788), 2 Term Rep. 456; 100 E. R. 245.

1598.—*Where the return to a mandamus contains a statement of facts partly true & partly false, the whole return is not thereby vitiated, & the ct. will not grant a peremptory mandamus under such circumstances, unless the facts which are true are in themselves insufficient to show that a mandamus ought not to issue.*—*R. v. LEICESTER & NORTHAMPTON CANAL CO.* (1841), 5 J. P. 708.

1599.—*To a writ of mandamus requiring defts. to enter A. on the burgess roll of W., being duly qualified, deft. returned that A. was not duly qualified, & also that he was disqualified, by reason of his not having paid certain rates. On demurrer to the whole return:—Held: it being admitted that the non-payment of rates was no disqualification, that part of the return, which traversed the general allegation in the writ that A. was duly qualified was sufficient.*—*R. v. NEW WINDSOR CORPN.* (1845), 7 Q. B. 908; 14 L. J. Q. B. 319; 5 L. T. O. S. 406; 9 Jur. 798; 115 E. R. 730.

Annotation:—*Consd. R. v. Dover Corpn.* (1847), 11 Q. B. 260.

1600.—*—*—*—*—*R. v. BLUCK* (1846), 10 J. P. Jo. 387.

1601.—*The rule of law is, that wherever there is a mandamus directed to a party to do some act, or to return some cause to the contrary, it is competent to that person to return as many causes as he pleases, provided they are not inconsistent, & if any one of them is sufficient, no peremptory mandamus will be awarded (PARKE, J.).*—*R. v. LONDON CORPN.* (1832), 3 B. & Ad. 255; 1 L. J. K. B. 79; 1 L. J. M. C. 10; 110 E. R. 96; *subsequent proceedings* (1833), 5 B. & Ad. 233.

Annotations:—*Mentd. R. v. Oundle* (1834), 1 Ad. & El. 283; *R. v. Johnson* (1839), Macl. & Rob. 1; *R. v. Darlington School* (1844), 9 Jur. 21; A.-G. v. Powis (1853), Kay, 186; *Re Ashlin, Ex p. Glyn* (1854), 23 L. T. O. S. 15; *R. v. Saddlers' Co.* (1861), 4 L. T. 54.

1602. Causes inconsistent—Return quashed.—A return to a mandamus, that the party removed was duly elected, that he was removed for non-attendance, & that his election was void by his not having taken the sacrament, is bad for its repugnancy.—*R. v. POMFRET CORPN.* (1712), 10 Mod. Rep. 107; 88 E. R. 648.

1603.—*—*—*—*—*R. v. CAMBRIDGE CORPN.*, No. 1597, *ante*.

1604.—*(1) If several inconsistent causes be returned to a mandamus the ct. will quash the whole return.*

(2) After a return has been made to a mandamus, deft. cannot make any objection to the writ itself.—*R. v. YORK CORPN.* (1792), 5 Term Rep. 66; 101 E. R. 38.

Annotations:—*As to (1) Reid. R. v. Dover Corpn.* (1847), 11 Q. B. 277. *As to (2) Consd. R. v. Ledgard* (1841), 1 Q. B. 616. *Reid. R. v. Margate Pier Co.* (1819), 3 B. & Ad. 220. *Generally, Mentd. R. v. Hughes* (1825), 4 B. & C. 368.

(c) *To Mandamus to elect, admit or appoint to Office.*

1605. To elect—That election has taken place.—It is a good return to a mandamus for electing an officer, that there has been an election.—*R. v. WILLIAMS* (1754), Say. 140; 96 E. R. 830.

1606. To admit—Not duly elected.—*R. v. HILL* (1691), 1 Show. 253; 89 E. R. 555.

1607.—*Admission of two persons.*—Upon a mandamus to swear in two churchwardens, a return that they were not duly elected is bad, unless it shows that neither of them was.—*R. v. GUISE* (1704), 2 Ld. Raym. 1008; 3 Salk. 88; 92 E. R. 171; *sub nom. R. v. GUY*, 6 Mod. Rep. 89.

1608.—*To a mandamus to admit B. into the office of churchwarden, reciting that he had been duly elected, a return that B. was not duly elected is good.*—*R. v. WILLIAMS* (1828), 8 B. & C. 681; 3 Man. & Ry. K. B. 402; 2 Man. & Ry. M. C. 32; 7 L. J. O. S. M. C. 46; 108 E. R. 1196.

Annotations:—*Consd. R. v. Sarum Bp.*, [1916] 1 K. B. 466. *Reid. R. v. New Windsor Corpn.* (1845), 7 Q. B. 908; *R. v. L. & N. W. Ry.* (1851), 16 Q. B. 864; *R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 404. *Mentd. Story v. Colk* (1848), 6 Notes of Cases Supp. xxxiii; *Westerton v. Davidson* (1854), 1 Ecc. & Ad. 365.

1609.—*A mandamus to admit M. to the office of alderman having issued, the return stated that M. was elected by a majority of votes, & returned as so elected to the ct. of mayor & aldermen, that a petition was presented to that ct. against M.'s admission to the office, whereupon they examined the merits of the petition according*

PART VI. SECT. 6. SUB-SECT. 5.—
C. (b).

1595 i. All consistent causes may be returned.—Where the treasurer of a district council refused to pay the account of the clerk of the peace for

certain services, & returned to a mandamus nisi that such charges were not shown by the clerk of the peace to be connected with the administration of justice, or to have been specifically provided for by law, so as to render it necessary that they should be

audited by the district council; & returned further, that there were no funds in his hands out of which he could pay those charges; the return was allowed.—*CLERK OF THE PEACE v. WESTERN DISTRICT MUNICIPAL COUNCIL* (1844), 1 U. C. R. 162.—CAN.

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to custom, & determined that he was not a fit & proper person to be admitted to the office, nor duly elected, & further, that he was not in fact duly elected:—*Held*: this return was not inconsistent.—*R. v. LONDON CORPN.* (1833), 5 B. & Ad. 233; 1 Nev. & M. K. B. 285; 2 Nev. & M. K. B. 126; 2 L. J. K. B. 186; 110 E. R. 778.

1610. — Not elected.]—Not chosen is a good return to a mandamus to swear churchwardens.—*R. v. TWITTY* (1702), 2 Salk. 433; 7 Mod. Rep. 83; Holt, K. B. 442; 91 E. R. 377.

Annotation:—*Consd. R. v. Williams* (1828), 8 B. & C. 681.

1611. — —.]—*Non fuit electus* is a good return to a mandamus.—*R. v. CORNWALL CORPN.* (1708), 11 Mod. Rep. 174; 88 E. R. 971.

1612. — —.]—*Non fuit electus* is not a good return to a mandamus to swear a churchwarden.—*R. v. WHITE* (1724), 2 Ld. Raym. 1379; 8 Mod. Rep. 325; 92 E. R. 399.

Annotations:—*N.F. R. v. Harwood* (1725), 2 Ld. Raym. 1405. *Consd. R. v. Williams* (1828), 8 B. & C. 681.

1613. — —.]—On a mandamus to the ecclesiastical officer to swear in a person elected churchwarden, the officer may return that the person he is directed to swear in was not elected.—*R. v. HARWOOD* (1725), 2 Ld. Raym. 1405; 8 Mod. Rep. 380; 92 E. R. 414.

Annotations:—*Consd. R. v. Williams* (1828), 8 B. & C. 681. *Refd. R. v. Sowter* (1900), 70 L. J. Q. B. 87.

1614. — Election void—Must show not subsequently elected.]—*R. v. ABINGDON CORPN.*, No. 1505, *ante*.

1615. — That mandamus wrongly directed.]—If a mandamus be granted to the master of a college to admit a fellow, the ct. will not supersede the writ on an affidavit by the master that there is a visitor, but he must return that fact to the writ.—*R. v. WHALEY* (1740), 2 Stra. 1139; 7 Mod. Rep. 308; 93 E. R. 1087.

1616. — Lis pendens.]—*Lis pendens* is not a good return to a mandamus to swear in churchwardens, though accompanied with very special circumstances.—*R. v. HARRIS* (1763), 1 Wm. Bl. 430; 3 Burr. 1420; 96 E. R. 245.

Annotations:—*Consd. R. v. Sowter*, [1901] 1 K. B. 66. *Refd. R. v. Williams* (1828), 7 L. J. O. S. M. C. 46. *Mentd. Harrison v. Barrett* (1876), Trist. 43.

1617. — Setting out custom to hold court for admission—Need not specify time.]—In setting out in the return to a mandamus, a custom to hold cts. for the admission of freemen the place is sufficiently alleged if it be averred to be held within the city & the time when need not be set out.—*R. v. BOSWORTH* (1739), 2 Stra. 1112; 93 E. R. 1066.

See, also, CORPORATIONS, Vol. XIII., pp. 305, 307, Nos. 374, 395–398.

1618. To appoint overseers—"Did nominate & appoint."]—Upon a return to a mandamus for appointing overseers it was excepted that it was only said that in pursuance of the mandamus we do humbly certify, that did nominate & appoint, etc. without saying that we did:—*Held*: the return would be disallowed.—*R. v. LANCASTER JJ.* (1734), 2 Barn. K. B. 430; 94 E. R. 599.

1619. — That place not village or township.]—It is a good return to a mandamus for appointing overseers that the place is not a village or township.—*R. v. WELBECK, NOTTINGHAMSHIRE (INHABITANTS)* (1740), 2 Stra. 1143; 93 E. R. 1089.

Annotations:—*Consd. R. v. Showler* (1763), 3 Burr. 1391. *Refd. R. v. Middlesex JJ.* (1754), Say. 148; *R. v. Bedfordshire JJ.* (1782), Cald. Mag. Cas. 187.

(d) To Mandamus to restore to Office.

1620. General rule—Must state opportunity given to answer charge.]—*EXETER CITY v. GLIDE* (1692), 4 Mod. Rep. 33; Holt, K. B. 169; 87 E. R. 245; *sub nom. R. v. GLIDE*, 12 Mod. Rep. 27; *sub nom. R. v. EXETER CORPN.*, 1 Show. K. B. 364; Holt, K. B. 435; Comb. 197.

Annotations:—*Consd. R. v. Shrewsbury Corpn.* (1734), Ridg. temp. H. 46. *Mentd. R. v. Cambridge University, Bentley's Case* (1724), Fortes, Rep. 202; *R. v. Ponsenby* (1755), 1 Keny. 1; *R. v. London* (1785), 4 Doug. K. B. 360; *Osgood v. Nelson* (1869), 10 B. & S. 119.

1621. — —.]—A return to a mandamus to restore to office considered insufficient, because it did not state that the party had been summoned to answer to the charge before he was removed.—*R. v. GASKIN* (1799), 8 Term Rep. 209; 101 E. R. 1349.

Annotations:—*Fold. R. v. Smith* (1844), 5 Q. B. 614. *Mentd. Doe d. Thanet v. Gartham* (1823), 8 Moore, C. P. 368; *R. v. Darlington School* (1844), 6 Q. B. 682; *Re Hammer-smith Rent-Charge* (1849), 4 Exch. 87; *Bonaker v. Evans* (1850), 16 Q. B. 162; *R. v. Cheshire Lines Committee* (1873), 42 L. J. M. C. 100; *Abergavenny v. Llandaff Bp.* (1888), 20 Q. B. D. 460.

1622. — —.]—Mandamus to a vicar to restore H. to the office of parish clerk. Return, that H. had on several specified occasions misconducted himself. Plea, stating that H. had not been summoned to answer for his conduct before his removal:—*Held*: the return was bad for not showing such summons.—*R. v. SMITH* (1844), 5 Q. B. 614; 1 Dav. & Mer. 564; 13 L. J. Q. B. 166; 2 L. T. O. S. 400; 9 J. P. 5; 8 Jur. 599; 114 E. R. 1381.

Annotations:—*Mentd. R. v. Darlington School* (1844), 6 Q. B. 682; *Re Teather & Poor Law Comrs.* (1850), 19 L. J. M. C. 70; *Abergavenny v. Llandaff Bp.* (1888), 20 Q. B. D. 460.

1623. Custom to remove at pleasure—Must be particularly stated.]—A custom to remove *ad libitum* is good, but it must be returned positively.—*R. v. COVENTRY CORPN.* (1698), 2 Salk. 430; 1 Ld. Raym. 391; 91 E. R. 273.

1624. — Removal pursuant to custom.]—Return to a mandamus, that C. was not duly elected sexton according to ancient custom, that there is a custom for the inhabitants, etc., to remove at pleasure, & that C. was removed pursuant to such custom, is good.—*R. v. TAUNTON ST. JAMES (CHURCHWARDENS)* (1776), 1 Cowp. 413; 98 E. R. 1180.

Annotations:—*Consd. R. v. Cambridge Corpn.* (1788), 2 Term Rep. 456. *Refd. R. v. Lyme Regis* (1779), 1 Doug. K. B. 79.

1625. Power to remove—Good cause for removal.]—Return of a mandamus to restore an officer showed a power to remove & good cause of removal, namely bribery:—*Held*: a good return, though the offence was indictable & there had been no conviction.—*R. v. CARLISLE CORPN.* (1723), Fortes, Rep. 200; 8 Mod. Rep. 99; 92 E. R. 817.

Annotations:—*Refd. R. v. Derby Corpn.* (1735), Lee temp. Hard. 153. *Mentd. R. v. Shrewsbury Corpn.* (1735), Lee temp. Hard. 147.

1626. — Need not be alleged to be in corporate body at large.]—(1) In a return to a mandamus to restore, if it is stated that the party was removed by the corporate body at large, it is unnecessary to aver that the power of removal is vested in them, because it is incidental to them, unless given by charter, bye law, etc. to a select part.

(2) An action will lie for a *suppressio veri* in a return, as well as for an *allegatio falsi*.

(3) When non-residence is a ground for removing a corporator, it is unnecessary to summon him previously to come & reside.—*R. v. LYME REGIS CORPN.* (1779), 1 Doug. K. B. 149; 99 E. R. 98.

Annotation:—*As to (1) Refd. R. v. Westwood* (1830), 7 Bing. 1.

1627. Consent to removal.]—It is not a good return to a mandamus to restore a member of a corp. that he consented to be turned out.—*R. v. LANE* (1709), 2 Ld. Raym. 1304; 11 Mod. Rep. 270; *Fortes. Rep.* 275; 92 E. R. 354.

Annotations:—Refd. R. v. Carlisle Corp. (1723), *Fortes. Rep.* 200; *R. v. Derby Corp.* (1735), *Lee temp. Hard.* 153. *Mentd. R. v. Patteson* (1832), 4 H. & Ad. 9.

1628. Never properly admitted.]—To a mandamus for restoration to the town clerkship of H. a return was made that A. never was admitted in a proper way to the office:—*Held*: the return was bad as it should have been that he was not admitted.—*HEREFORD'S CASE* (1664), 1 Sid. 209; 82 E. R. 1061.

1629. —.]—Mandamus to restore A. to the office of coroner. The return stated that on a certain day he was duly chosen, but that neither at the time of his election, nor since that time, nor is he yet admitted, etc.:—*Held*: this was a sufficient denial of his admission at any time whatsoever, & was a good return.—*R. v. KING'S LYNN CORPN.* (1737), *Andr.* 105; 95 E. R. 318.

Annotation:—Refd. R. v. Lyme Regis (1779), 1 Doug. K. B. 79.

1630. —.]—A peremptory mandamus was granted to a common council man for not setting out in the return to a mandamus that the party was summoned.—*R. v. KING'S-LYNN CORPN.* (1734), *Cunn.* 98; 94 E. R. 1086.

Annotation:—Refd. R. v. Liverpool Corp. (1759), 2 Burr. 723.

1631. No knowledge of election.]—*BASSET v. BARNESTABLE CORPN.*, No. 889, *ante*.

1632. Not duly elected.]—A return to a mandamus *non fuit debite electus* is good.—*R. v. LAMBERT* (1690), 12 Mod. Rep. 2; 88 E. R. 1125; *sub nom. LAMBERT'S CASE*, *Carth.* 170.

Annotation:—Refd. R. v. Lyme Regis (1779), 1 Doug. K. B. 79.

1633. Elected yearly—& removed at end of year —Time of election not stated.]—*R. v. CHESTER CITY*, No. 1345, *ante*.

1634. — Must show another chosen.]—On a mandamus to restore a town clerk a return that he was *annuatim eligibilis* is bad. The office of town clerk is *primâ facie* an office for life.

Besides, though he be *annuatim eligibilis*, he may continue town clerk, & will do so, until they choose another (*per cur.*).—*R. v. DURHAM CORPN.* (1713), 10 Mod. Rep. 146; 88 E. R. 667.

1635. Removal for crime—Crime must be alleged.]—*R. v. SHAW* (1697), 12 Mod. Rep. 113; 88 E. R. 1202.

1636. Removal for absence.]—*R. v. SHREWSBURY CORPN.* (1735), 7 Mod. Rep. 201; *Ridg. temp. H.* 46; 2 Barn. K. B. 394; *Lee temp. Hard.* 147; 87 E. R. 1190; *subsequent proceedings, sub nom. SHREWSBURY TOWN v. KYNASTON* (1737), 7 Bro. Parl. Cas. 396, H. L.

Annotation:—Mentd. R. v. Theodorick (1807), 8 East, 543.

1637. Residential disqualification—Need not state previous summons to reside.]—*R. v. LYME REGIS CORPN.*, No. 1626, *ante*.

1638. Disqualification by non-payment of rates—Must show nature of rates & time when made—Mode of assessment & liability of prosecutor.]—A return, alleging the non-payment of certain rates as a ground of disqualification, must show with certainty & particularity the nature of the rates, the times when they were made, & how prosecutor was assessed to & became liable to pay them.—*R. v. DOVER CORPN.* (1847), 11 Q. B. 260; 17 L. J. M. C. 75; 12 Jur. 334; 116 E. R. 473, Ex. Ch.

Annotations:—Mentd. Re Harwich Corp. (1852), 21 L. J. Q. B. 193; *Aslatt v. Southampton Corp.* (1880), 16 Ch. D. 143.

Return must be certain.]—*See Nos.* 1578–1587, *ante*.

See, further, CORPORATIONS, Vol. XIII., pp. 281, 284, 306, 317–321, 324, Nos. 121, 168, 378, 512, 519, 536, 547–554, 563, 597.

(e) *To Mandamus to Inferior Tribunals.*

1639. To justices—To determine complaint—Complaint determined.]—To a mandamus to justices to determine a complaint before them, they returned that it was determined, which was allowed.—*R. v. RICHARDSON* (1743), 1 Wils. 21; 95 E. R. 470.

Annotation:—Refd. R. v. Old Hall (1839), 10 Ad. & El. 248.

1640. — To give judgment in indictment—Statement of erroneous judgment.]—The ct. will not quash a return to a mandamus, which directs the justices of an inferior ct. to give judgment on an indictment, merely because it states an erroneous judgment given below.—*R. v. WEST RIDING OF YORKSHIRE JJ.* (1798), 7 Term Rep. 467; 101 E. R. 1080.

Annotations:—Refd. R. v. Old Hall (1839), 10 Ad. & El. 248. *Mentd. R. v. Gloucestershire JJ.* (1844), 3 Jur. 1069.

1641. — To hear appeal—Appeal already heard & determined.]—*R. v. SUSSEX (EASTERN DIVISION) JJ.* (1845), 1 New Mag. Cas. 389; 5 L. T. O. S. 241; 9 J. P. Jo. 387.

1642. — Return justifying refusal to hear.]—A writ of mandamus commanded justices to hear an appeal by the overseers of L. against an order of two justices adjudging the settlement of a lunatic to be in L. & ordering the overseers of L. to pay a sum of money so long as the lunatic should be confined in the asylum under another order made by the same two justices, & bearing date the same day. The return set out facts relating to "the said order" & justified the refusal to hear:—*Held*: it sufficiently appeared that the order referred to in the return was the order addressed to the overseers of L. & appealed against by them.—*R. v. WEST RIDING OF YORKSHIRE JJ.* (1847), 10 Q. B. 763; 16 L. J. M. C. 171; 9 L. T. O. S. 311; 11 J. P. 662; 11 Jur. 1013; 116 E. R. 290.

See, further, MAGISTRATES.

(f) *Other Cases.*

1643. To commissioners to levy rate—Return that commission expired shortly after writ.]—It is a good return to a mandamus commanding comrs. of sewers to make a rate to reimburse an expeditor that they had before the writ issued made a rate by which he would be reimbursed, & that their commission expired within so short a time after the service of the writ that they could not make a fresh rate.—*R. v. TENDRING, LEXDEN & WINSTREE SEWERS COMRS.* (1727), 2 Ld. Raym. 1479; 92 E. R. 461.

1644. To deliver books & documents—Return that books not in possession of party at time of writ or since.]—A mandamus suggested that deft. was surveyor of the highways for a time named, & now expired, & commanded him to deliver to the churchwardens all books, etc., in his possession, or show cause to the contrary. Deft. returned that he had not, on the day of the teste of the mandamus, nor since, nor now, nor when he was required on behalf of the churchwardens, any books, etc., in his possession:—*Held*: this was a good return.—*R. v. ROUND* (1835), 4 Ad. & El. 139; 1 Har. & W. 546; 5 Nev. & M. K. B. 427; 3 Nev. & M. M. C. 307; 111 E. R. 740.

Annotations:—Refd. R. v. Payn (1840), 11 Ad. & El. 955; *R. v. Kensington* (1848), 12 Q. B. 654; *R. v. L. & N. W. Ry.* (1851), 16 Q. B. 864.

Sect. 6.—Procedure: Sub-sect. 5, C. (f) & D.; sub-sect. 6, A. & B.]

1645. To allow inspection of orders of sessions & accounts—Return claiming statutory authority for refusal.]—To a *mandamus*, calling on the justices & clerk of the peace of a county to allow ratepayers an inspection of certain orders of sessions, concerning the expenditure of the county rate, & all accounts, etc., relating to such orders, it was returned that inspection of the orders had been given, but that the accounts were those of the treasurer & high constable, which had been passed at sessions, & deposited with the clerk of the peace, according to County Rates Act, 1738 (c. 29), s. 8; & that an abstract thereof had been published, according to County Rates Act, 1815 (c. 51), s. 18; wherefore the inspection of such accounts had been refused:—*Held*: a good return.—*R. v. STAFFORDSHIRE J.J.* (1837), 6 Ad. & El. 84; 1 Nev. & P. K. B. 260; Nev. & P. M. C. 71; Will. Woll. & Dav. 98; 6 L. J. M. C. 65; 1 J. P. 136; 112 E. R. 33.

Annotations:—Reid. Ex p. Briggs (1859), 1 E. & E. 881. *Mentd.* *Mutter v. Eastern & Midlands Ry.* (1888), 38 Ch. D. 92.

1646. To compel officers to pay money to guardians—Return denying appointment of guardians—Not specifying defect in appointments.]—A *mandamus* to the officers of a parish included in an union, formed under Poor Law Amendment Act, 1834 (c. 76), s. 26, recited the due appointment of certain persons to be guardians of the poor of the union, & directed them to pay a sum, out of the poor rates collected by them, to the treasurer of the union. The return stated that the supposed guardians were not duly appointed under the provisions of the Act, & that, at the issuing of the writ, the supposed guardians therein mentioned were not guardians of the poor of the union:—*Held*: the return was insufficient for not distinctly setting forth any defect in the appointment, & would be quashed on motion, & a peremptory *mandamus* awarded.—*R. v. ST. ANDREW & ST. GEORGE THE MARTYR (GOVERNORS, ETC.)* (1839), 10 Ad. & El. 736; 3 J. P. 352; 113 E. R. 279.

1647. To carry out statutory duty—To build railway—Return alleging incapacity to obey.]—*Mandamus* to a railway co. to make a branch authorised by an extension Act, which incorporated Lands Clauses Consolidation Act, 1845 (c. 18). Return: that the capital required to make the branch was not subscribed for by any contract, according to sect. 16 of the Act, & that the branch could not be made without the exercise of the compulsory powers to take land. It appeared on the record that the period for the exercise of the compulsory powers had expired since the return & before the judgment:—*Held*: (1) sect. 16 was not applicable to an extension Act where the funds were to be furnished by the co.; (2) even if the sect. were applicable, the return showed no incapacity to obey the writ, as it did not aver that defts. were unable to procure the execution of the subscription contract; (3) a peremptory *mandamus* must be awarded, though, since the return, compliance had become impossible.—*R. v. GREAT WESTERN RY. CO.* (1852), 1 E. & B. 253; 22 L. J. Q. B. 65; 20 L. T. O. S. 93; 17 Jur. 85; 118 E. R. 434; *revid.* on other grounds, *sub nom.* *GREAT WESTERN RY. CO. v. R.* (1853), 1 E. & B. 874, Ex. Ch.

Annotations:—As to (3) Reid. Shackell v. West (1859), 2 E. & E. 326. *Generally, Mentd. Weld v. L. & S. W. Ry.* (1862), 32 Beav. 340; *Forbes v. Lee Conservancy Board* (1879), 48 L. J. Q. B. 402.

1648. ——— Return that company could not acquire land.]—*Mandamus* to a railway co. to

make a line, authorised by an Act. The time limited for the exercise of the compulsory powers for acquiring had expired. The writ contained a suggestion that defts. had given notices, & made contracts, by virtue of which they were "either actually in possession of, or entitled to acquire the fee simple in possession of, all the lands required for the purpose of constructing" the line. Return: that defts. were not nor are "either actually in possession, or entitled to acquire the fee simple or possession, of all the land required for the purpose of constructing" the line:—*Held*: the return was bad in substance, as, consistently with its truth, defts. might have it in their power to purchase the part of which they were not possessed; & therefore the return did not show inability.—*R. v. GREAT WESTERN RY. CO.* (1853), 1 E. & B. 774; 22 L. J. Q. B. 263; 21 L. T. O. S. 74; 17 Jur. 817; 1 C. L. R. 71; 118 E. R. 626.

1649. ——— To fence road over private property—Return alleging satisfaction made to owner—Lack of funds.]—*R. v. LUTON ROADS TRUSTEES*, No. 1030, *ante*.

1650. To pay money to burial board—Return that board not legally formed.]—The parish of M. is divided into fourteen townships, each maintaining its own poor & raising its own poor rate. In June 1858 a vestry of the entire parish resolved upon having a new burial-ground, & a burial board was appointed. The sum of £3,000 having been borrowed for the purposes of the new burial-ground, it became necessary to call for £303 6s. 5d. out of the poor-rates, to pay the interest, etc., & the sum of £55 8s. 7d. was apportioned upon the township of M. The overseers of M. having refused to pay, a *mandamus* issued to compel payment, to which they made a return that the approval of the Secretary of State was not obtained, as required by Burial Act, 1857 (c. 81), s. 9, & that the board was therefore not legally formed:—*Held*: the return was a good answer to the *mandamus*.—*R. v. WRIGHT* (1861), 5 L. T. 345; 8 Jur. N. S. 260; 10 W. R. 86.

1651. To churchwardens to convene meeting pursuant to precept—Return that precept issued to predecessors—& meeting convened by predecessors.]—*R. v. MONKSTOWN UNION (CHURCHWARDENS)*, *R. v. NUGENT* (1843), 1 L. T. O. S. 361.

D. Amendment and Withdrawal of.

1652. Amendment—Clerical error.]—A clerical mistake may be amended in the return to a *mandamus*, after the return has been filed.—*R. v. LYME REGIS CORPN.* (1779), 1 Doug. K. B. 135; 99 E. R. 89.

Annotations:—Reid. R. v. Grampound Corpn. (1798), 7 Term Rep. 699; *R. v. Conyers* (1846), 10 Jur. 899.

1653. ——— Where question not sufficiently raised—At instance of party interested—Return by justices.]—The ct. will not direct in what manner justices shall make their return to a *mandamus*, but if the return made to a *mandamus* be insufficient to raise the question intended to be agitated, the ct. will, at the instance of the party interested, make a rule giving the justices liberty to amend in the manner required, if they shall be so minded.—*R. v. MARRIOTT* (1822), 1 Dow. & Ry. K. B. 166; 1 Dow. & Ry. M. C. 62.

1654. ———.]—*R. v. KENT (INHABITANTS)* (1844), 4 L. T. O. S. 112; 8 J. P. Jo. 756.

1655. ——— By third party interested.]—By 1 Will. 4, c. 21, s. 4, after a magistrate has made a return to a *mandamus* requiring him to issue a distress warrant, & prosecutor has demurred, the Ct. of Q. B. will give leave to the party interested, who has had notice under the rule *nisi* for the

mandamus & has shown cause, to amend the magistrate's return & conduct the defence the magistrate not opposing the application for such leave.—*PAYNTER v. R.* (1847), 10 Q. B. 908; 16 L. J. M. C. 136; 13 J. P. 457; 11 Jur. 973; 116 E. R. 344, Ex. Ch.

As to right of party interested to make return, see Sub-sect. 5, B., *ante*.

1656. — Not to set forth different constitution—Return by corporation—After verdict.]—After verdict on a traverse to return to a mandamus made by a corp., the ct. would not allow defts. to amend the return by setting forth a different constitution.—*R. v. GRAMPOUND CORPN.* (1798), 7 Term Rep. 699; 101 E. R. 1206.

Annotation:—*Mentd. Matthews v. Swift* (1835), 1 Hodg. 175.

1657. Withdrawal—By leave of court.]—*R. v. BARKER* (1763), 3 Burr. 1379; 97 E. R. 884.

1658. — Consent of both parties.]—*R. v. TENDRING HUNDRED WATERWORKS CO.* (1912), 76 J. P. Jo. 616, D. C.

1659. — Court will not order—Return containing matter demurrable & traversable.]—The ct. will not order the return to a mandamus to be taken off the files of the ct., notwithstanding it contains several matters, some of which, if true, would be a good answer to the writ, & which would be admitted by prosecutors demurring under 6 & 7 Vict. c. 67, for the purpose of objecting to the validity of the other part of the return.—*R. v. BIRMINGHAM CORPN.* (1844), 3 L. T. O. S. 220; 8 J. P. Jo. 407.

SUB-SECT. 6.—PROCEEDINGS ON THE RETURN.

A. In General.

See, now, C. O. R., r. 136.

1660. Right to begin—Party objecting to return—Though objection taken to form of mandamus.]—

(1) A mandamus, to appear & produce & explain accounts to auditors, cannot direct the parties to appear, etc., at such time & place as the auditors may appoint & give notice thereof, where by statute the parties are only required to appear at a meeting directed to be held at a certain place.

(2) When, upon a motion to quash the return to a mandamus for insufficiency & to issue a peremptory mandamus, the matter is set down in the Crown paper for argument, counsel for the Crown is entitled to begin, although the counsel for defts. propose to urge objections to the mandamus itself.

(3) The ct. has power to mould the rule for a mandamus, but cannot re-mould the writ after it has issued, & award a peremptory mandamus in a more limited form than the original mandamus.—*R. v. ST. PANCRAS CHURCH TRUSTEES* (1835), 3 Ad. & El. 535; 5 Nev. & M. K. B. 219; 3 Nev. & M. M. C. 245; 111 E. R. 517.

Annotation:—As to (1) & (3) *Refd. R. v. Tithe Comrs.* (1849), 14 Q. B. 459.

1661. — — — — —.]—When the validity of a return to a mandamus is argued on a *concilium*, the party impugning the return must begin, although the opposite party stated that he shall object to the form of the mandamus.—*R. v. ST. PANCRAS CHURCH TRUSTEES* (1837), 6 Ad. & El. 314; 1 Nev. & P. K. B. 507; Nev. & P. M. C. 196; 112 E. R. 119.

Annotation:—*Mentd. R. v. Poor Law Comrs.* (1851), 17 Q. B. 445.

1662. Prosecutor bringing forward other claims

—Not before court on motion.]—*R. v. MANCHESTER CORPN.* (1844), 3 L. T. O. S. 219.

1663. Order for inspection of documents—On traverse of return—Mandamus to enforce civil rights.]—*R. v. AMBERGATE, ETC., RY. CO.*, No. 1488, *ante*.

1664. Place of trial.]—Though by 9 Ann. c. 20, s. 2, prosecutor of a mandamus, to which there is a return, & issue taken on the facts therein, had an option to try the question in the same county in which he might have brought an action for a false return, yet if all the material facts are alleged in one county & issue taken thereon there, he cannot issue the *venire facias* into another county, though he might originally have alleged the facts there, & have there brought his action for a false return.—*R. v. NEWCASTLE UPON TYNE CORPN.* (1800), 1 East, 114; 102 E. R. 46.

1665. Where issue directed to be tried—Effect of delay by applicant.]—When the Ct. of K. B. directs an issue to be tried on the return to a mandamus, it must be done within a year, or the ct. will proceed as if appt. for the mandamus had lost the trial.—*MAY'S CASE* (1823), 1 L. J. O. S. K. B. 152.

1666. Where return not *prima facie* frivolous—How validity argued.]—Where the return to a mandamus is not frivolous on the face of it, its validity must be argued on a *concilium*, & not on a rule for quashing the return.—*R. v. ST. SAVIOUR'S, SOUTHWARK* (1838), 7 Ad. & El. 925; 3 Nev. & P. K. B. 126; 1 Will. Woll. & H. 105; 7 L. J. M. C. 59; 2 Jur. 132; 112 E. R. 718.

Annotation:—*Refd. R. v. West Riding of Yorkshire JJ.* (1844), 1 New Sess. Cas. 98.

B. Pleading to Return.

See, now, C. O. R., rr. 125, 127, 129, 259.

1667. By demurrer.]—*Qu.*: whether by Municipal Offices Act, 1710 (c. 25), s. 2, the return to a mandamus can be demurred to.—*R. v. OUNDLE (LORD OF THE MANOR)* (1834), 1 Ad. & El. 283; 3 Nev. & M. K. B. 484; 3 L. J. K. B. 117; 110 E. R. 1214.

Annotations:—*Refd. R. v. Eastern Counties Ry.* (1840), 2 Ry. & Can. Cas. 260; *R. v. Birmingham & Gloucester Ry.* (1841), 2 Ry. & Can. Cas. 691. *Mentd. Glass v. Richardson* (1852), 2 De G. M. & G. 658; *Flack v. Downing College, Cambridge* (1853), 13 C. B. 945.

1668. — — — — —.]—*R. v. OTTERTY ST. MARY, DEVONSHIRE, CHARITY TRUSTEES* (1843), 1 L. T. O. S. 82; *subsequent proceedings*, 7 J. P. 433; (1844), 8 J. P. Jo. 789.

1669. Traverse to return—Within what time.]—*ANON.* (1731), 2 Barn. K. B. 106; 94 E. R. 385.

1670. — Material facts may be traversed—After sufficiency decided.]—*R. v. NORTH MIDLAND RY. CO.*, No. 1299, *ante*.

1671. Several matters may be pleaded to—By leave of court.]—*R. v. AMBERGATE, ETC., RY. CO.*, No. 1488, *ante*.

1672. Return of unconditional compliance—May be traversed—Without recourse to separate action.]—A return of unconditional compliance to a writ of mandamus, which is not a peremptory writ, may be pleaded to, notwithstanding R. S. C., Ord. 53, r. 9, since the procedure of pleading to the return to such writ as regulated by Municipal Offices Act, 1710 (c. 25), & 1 Will. 4, c. 21, is preserved by R. S. C., Ord. 68, r. 1, & R. S. C., Ord. 71, r. 2.—*R. v. PIREHILL NORTH JJ.* (1884), 14 Q. B. D. 13; 51 L. T. 534; *sub nom. R. v. STAFFORDSHIRE JJ.*, 54 L. J. M. C. 17; 49 J. P. 36; 33 W. R. 205; 1 T. L. R. 78, C. A.

Annotations:—*Expld. R. v. King* (1888), 20 Q. B. D. 430.

Sect. 6.—Procedure: Sub-sect. 6, B., C. & D.; sub-sect. 7.]

Refd. R. v. Kingston JJ., *Ex p. Davey* (1902), 86 L. T. 589; R. v. Marshland Smeeth & Fen District Comrs., [1920] 1 K. B. 155.

1673. — — — — —.]—Where to a writ of mandamus calling upon justices to hear & determine an application for a wine licence, the justices make a return that they have heard & determined such application, it is open to appct. to plead in answer to the return that the justices have declined to decide whether the case came within any of the four grounds specified in Wine & Beerhouse Act, 1869 (c. 27), s. 8.—R. v. KING (1888), 20 Q. B. D. 430; 57 L. J. M. C. 20; 52 J. P. 164; *sub nom.* R. v. KING & MANCHESTER LICENSING JJ., 58 L. T. 607; 36 W. R. 600; *sub nom.* R. v. MANCHESTER LICENSING JJ., 4 T. L. R. 202, C. A. **Annotations:**—**Mentd.** R. v. Lancaster JJ. (1891), 55 J. P. 580; R. v. London JJ., [1895] 1 Q. B. 616.

C. Objections to Writ.

1674. Whether maintainable after return.]—R. v. YORK CORPN., No. 1604, *ante*.

1675. — Fatal defect.]—A writ of mandamus to a corpn., commanding them to pay a poor rate, omitted to state that debts. had no effects upon which a distress could be levied:—**Held:** this was a fatal objection to the writ, & might be taken after the return, or at any time before the issuing of the peremptory mandamus.—R. v. MARGATE PIER CO. (1819), 3 B. & Ald. 220; 106 E. R. 642.

Annotations:—**Refd.** R. v. Ledgard (1841), 1 Q. B. 616; *Clarke v. Leicestershire & Northamptonshire Union Canal Co.* (1845), 3 Ry. & Can. Cas. 730; *London Corpn. v. R.* (1848), 13 Q. B. 30; *Delamere v. R.* (1867), L. R. 2 H. L. 419.

1676. — On motion for peremptory mandamus.]—R. v. BRISTOL DOCK CO., No. 1534, *ante*.

1677. — On motion for attachment—For disobedience to peremptory mandamus.]—R. v. LEDGARD, No. 1566, *ante*.

1678. — Substantial objections.]—R. v. POWELL, No. 1159, *ante*.

1679. — — — — —.]—On demurrer to a traverse of the return to a mandamus, deft. may impeach the validity of the writ.—**CLARKE v. LEICESTERSHIRE, ETC., CANAL CO.** (1845), 6 Q. B. 898; 3 Ry. & Can. Cas. 730; 4 L. T. O. S. 435; 9 Jur. 215; 115 E. R. 339, Ex. Ch.

Annotation:—**Consd.** R. v. Marshland Smeeth & Fen District Comrs., [1920] 1 K. B. 155.

1680. — Objection to form.]—Attorneys of the superior cts. are entitled, by virtue of 6 & 7 Vict. c. 73, s. 27, to be admitted to inferior cts. of law. Where, therefore, a writ of mandamus directing the presiding officers of the Lord Mayor's ct. to admit A. described it as an "inferior ct.," without stating it to be a ct. of law or equity:—**Held:** the writ was bad, & the defect was not cured by such ct. being described in the return to the writ as a ct. of law.

It is now perfectly settled law that after a return to a mandamus objections may be taken to the form of the writ (**PARKE, B.**).—**LONDON CORPN. v. R.** (1848), 13 Q. B. 30; 13 J. P. 3; 13 Jur. 33; 116 E. R. 1174; *sub nom.* **LONDON CORPN. v. R.**, *Re ASHURST*, 17 L. J. Q. B. 330; *sub nom.* **LONDON CORPN. v. ASHURST**, 11 L. T. O. S. 271; *reversg.* S. C. *sub nom.* R. v. LONDON CORPN. (1847), 13 Q. B. 1.

Annotations:—**Refd.** R. v. S. E. Ry. (1853), 4 H. L. Cas. 471. **Mentd.** *Skelton v. Rushby* (1849), 4 Exch. 545; *Ex p. Millard* (1850), 15 L. T. O. S. 285; *Morris v. Lautour* (1864), 9 L. T. 767; *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239; *Cooke v. Gill* (1873), L. R. 8 C. P. 107.

1681. — — — — —.]—R. v. MARSHLAND SMEETH & FEN DISTRICT COMRS., No. 1156, *ante*.

Whether defects in writs cured by admissions or matter on return.]—See Nos. 1545–1548, *ante*.

D. Peremptory Writ.

See, now, C. O. R., r. 125.

Issue of peremptory writ in first instance.]—See Sub-sect. 3, *ante*.

1682. When granted—Insufficient return—To mandamus to restore.]—R. v. KING'S-LYNN CORPN. (1734), Cunn. 98; 94 E. R. 1080. **Annotation:**—**Refd.** R. v. Liverpool Corpn. (1759), 2 Burr. 723.

1683. — — — — — To mandamus to carry out statutory obligations.]—R. v. LUTON ROADS TRUSTEES, No. 1030, *ante*.

1684. — Whether after judgment in action for false return—Action brought in different court.]—No peremptory mandamus, will be granted, notwithstanding a judgment on demurrer for pltf. in an action for a false return, unless such action was brought in the ct. which granted the mandamus.—**GREEN v. POPE** (1696), 1 Ld. Raym. 125; Comb. 400; 91 E. R. 980; *sub nom.* ANON., 2 Salk. 428.

Annotations:—**Consd.** *Clarke v. Leicestershire, etc., Canal Co.* (1845), 6 Q. B. 898. **Refd.** R. v. Marshland Smeeth & Fen District Comrs., [1920] 1 K. B. 155. **Mentd.** *Sutherland v. Pratt* (1843), 11 M. & W. 296.

1685. — — — — —.]—After the return to a mandamus is falsified, a peremptory mandamus is of right.—**BUCKLEY v. PALMER** (1699), 2 Salk. 430; Holt, K. B. 440; 91 E. R. 374.

1686. — — — — —.]—**SURGEONS' CO. CASE** (1699), 1 Salk. 374; 91 E. R. 325.

Annotation:—**Refd.** ANON. (1730), 1 Barn. K. B. 327.

1687. — — — — —.]—The ct. will grant a peremptory mandamus after judgment for pltf. in an action for a false return, although a bill of exceptions was tendered at the trial.—**WRIGHT v. SHARPE** (1708), 11 Mod. Rep. 175; 88 E. R. 972.

Annotation:—**Mentd.** *Darlow v. Shuttleworth*, [1902] 1 K. B. 721.

1688. — Not pending action for false return.]—**RUDING v. NEWEL** (1734), 2 Stra. 983; 93 E. R. 966.

1689. — Not where original writ wrongly directed.]—A peremptory writ cannot be granted upon a mandamus which is improperly directed, though a return has been made thereto.—R. v. MORRIS (1698), 1 Ld. Raym. 337; 91 E. R. 1121; *sub nom.* R. & MORRICE v. LINCOLN CORPN., 12 Mod. Rep. 190.

Annotation:—**Mentd.** R. v. March (1760), 2 Burr. 999.

1690. — Before formal judgment.]—**FOOT v. PROWSE** (1720), 2 Stra. 697; 93 E. R. 791.

Annotations:—**Mentd.** R. v. Sparrow (1739), Sess. Cas. K. B. 177; R. v. Hughes (1825), 6 Dow. & Ry. K. B. 443; *Bray v. Somer* (1862), 2 B. & S. 374; *Robarts v. London Corpn.* (1882), 46 L. T. 623.

1691. — Not before judgment obtained on original mandamus.]—R. v. BALDWIN (1838), 8 Ad. & El. 947; 3 Per. & Dav. 124; 1 Will. Woll. & H. 681; 112 E. R. 1100.

1692. — Performance of act commanded becoming immaterial—Discretion of court.]—If the performance of the act commanded has become immaterial since the date of the writ, the ct. will exercise a discretion as to issuing a peremptory mandamus.—R. v. KENSINGTON (1848), 12 Q. B. 654; 17 L. J. Q. B. 332; 11 L. T. O. S. 327; 12 J. P. 743; 12 Jur. 747; 116 E. R. 1015.

Annotation:—**Mentd.** R. v. Withyham Overseers (1854), 2 C. L. R. 1657.

1693. — On traverse of answer to writ—Defendants in default.]—R. v. MARSHLAND SMEETH & FEN DISTRICT COMRS., No. 1156, *ante*.

1694. — Not where original mandamus only partly good.]—Unless prosecutor succeeds as to the whole of a writ of mandamus, he is not entitled

to a part, as the peremptory mandamus issues in the same terms as the original, omitting only the condition.—*R. v. EAST & WEST INDIA DOCKS, ETC., RY. CO.* (1853), 2 E. & B. 466; 22 L. J. Q. B. 380; 21 L. T. O. S. 180; 17 J. P. 807; 17 Jur. 1181; 1 W. R. 409; 1 C. L. R. 496; 118 E. R. 841.

Annotations:—Mentd. Fenwick v. East London Ry. (1875), L. R. 20 Eq. 544; A.-G. v. Met. Ry., [1894] 1 Q. B. 384; St. James & Pall Mall Electric Light Co. v. R. (1904), 73 L. J. K. B. 518.

1695. Must follow language of original writ.]—A mandamus which orders defts. to reinstate, repair, & maintain a railway, is bad as to the maintaining, for excess; & being bad in part, it is bad altogether, & cannot be enforced by a peremptory writ.

We cannot now alter or mould the writ; & if we were to grant a peremptory writ of mandamus, it must follow the language of the present writ, which directs deft. to maintain (PATTESON, J.).—*R. v. KIDWELLY & LLANELLY CANAL & TRAMROAD CO.* (1850), 14 Q. B. 481, n.; 15 L. T. O. S. 223; 117 E. R. 187.

1696. Court will not reopen question—After issue of peremptory writ.]—After a peremptory mandamus to swear an officer, no examination shall be permitted as to whether he was lawfully chosen.—*R. v. TURNER* (1682), T. Jo. 215; 84 E. R. 1224.

Annotation:—Refd. R. v. Clarke (1801), 2 East, 75.

1697. To officers after vacating office.]—Where a mandamus is addressed to churchwardens during their year of office, & disobeyed by them during that period, it is no reason for refusing a peremptory writ that their year of office has expired.—*R. v. ALLEN* (1872), L. R. 8 Q. B. 69; 42 L. J. Q. B. 37; 27 L. T. 707; 21 W. R. 190; *sub nom.* R. v. SHOULDRHAM (VICAR), 37 J. P. 310.

Annotation:—Mentd. R. v. Salisbury Bp., [1901] 1 K. B. 573.

SUB-SECT. 7.—FALSE RETURNS—DAMAGES.

See, now, C. O. R., r. 125.

Attachment for frivolous returns or failure to make returns.]—*See* Nos. 1710–1721, *post*.

1698. General rule.]—An action will lie for a *suppressio veri* in a return, as well as for an *allegatio falsi*.—*R. v. LYME REGIS CORPN.*, No. 1626, *ante*.

1699. Information—Against mayor—False return on behalf of majority of members.]—*R. v. ABINGDON CORPN.*, No. 1571, *ante*.

See, also, CORPORATIONS, Vol. XIII., pp. 319, 421, Nos. 536, 1410.

1700. — Sufficiency of evidence—Copy of writ & return from Crown Office.]—A copy from the Crown Office of the writ & return to a mandamus is sufficient evidence against the party on an information for a false return.—*R. v. CHAPMAN* (1704), 6 Mod. Rep. 152; Holt, K. B. 442; 87 E. R. 910.

Annotation:—Refd. Anon. (1730), 1 Barn. K. B. 327.

1701. — Court will direct to try facts—Where no one interested to bring action.]—Where no one in particular is interested to bring an action for a false return to a mandamus, & the affidavits are contradictory, the ct. will direct an information to try the facts between the parties.—*R. v. SPOTLAND OVERSEERS* (1735), Lee *temp.* Hard. 184; 95 E. R. 119.

Annotations:—Refd. R. v. Lancashire JJ. (1822), 1 Dow. & Ry. K. B. 485; R. v. Fall (1841), 1 Q. B. 636.

1702. — Whether criminal will lie—Return not corrupt nor wilfully false.]—*Qu.*: whether a criminal information will lie against justices for making a false return to a mandamus, unless the

return is corruptly & wilfully false.—*R. v. LANCA-SHIRE JJ.* (1822), 1 Dow. & Ry. K. B. 485; 1 Dow. & Ry. M. C. 127.

1703. Damages—Prosecutor entitled to claim—With costs—Though no private or particular interest.]—1 Will. 4, c. 21, s. 3, extends the provisions of Municipal Offices Act, 1710 (c. 25), to all writs of mandamus, & prosecutors are entitled by it to recover damages & costs for a false return, though they have no private or particular interest in the thing commanded to be done.—*R. v. FALL* (1842), 1 Q. B. 653; 13 L. J. Q. B. 137; 113 E. R. 1282; *sub nom.* FALL v. R., 2 Gal. & Dav. 803, Ex. Ch.; *affg.* S. C. *sub nom.* R. v. FALL (1841), 1 Q. B. 636.

Annotations:—Consd. R. v. Marshland Smeeth & Fen District Comrs., [1920] 1 K. B. 155. *Refd.* R. v. James (1843), 7 J. P. 383; Fotherby v. Met. Ry. (1866), L. R. 2 C. P. 188. *Mentd.* R. v. Kelk (1841), 1 Q. B. 660; Dods v. Evans (1864), 15 C. B. N. S. 621.

1704. — On traverse of answer to writ.]—*R. v. MARSHLAND SMEETH & FEN DISTRICT COMRS.*, No. 1156, *ante*.

1705. — Claim against drainage commissioners—Application of Public Authorities Protection Act, 1893 (c. 61).]—*R. v. MARSHLAND SMEETH & FEN DISTRICT COMRS.*, No. 1156, *ante*.

1706. — Action for—Whether proper remedy.]—The proprietors of the B. Canal Navigations being required by writ of mandamus to issue a warrant to the sheriff of the county commanding him to summon a jury for the purpose of assessing the sum of money to be paid to pltf., as satisfaction for injury done to him by the works of the co., returned that pltf. had sustained no damage in respect whereof defts. ought to make him satisfaction. In an action for a false return, no notice having been given:—*Held*: (1) no notice of action was necessary, under a clause in the co.'s private Act requiring one month's previous notice of "any action, suit, or information commenced or prosecuted against defts. for any matter or thing relating to that Act, or to the sanction of the powers & authorities or of any of the orders made, given, or directed by or under that Act," such words not being applicable to the making a return to a writ of mandamus; (2) if pltf. had sustained injury by any act done by the co. in violation of their Act of Parliament, a writ of mandamus & an action for a false return was not the proper remedy.

Pltf., in pursuance of 5 Will. 4, c. xxxiv., s. 52, gave defts. a notice to summon a jury, & therein stated the particulars of the injury or damage sustained by him to be the drawing up the water from the lower to the higher level of the canal, & the arbitrator reports that pltf. offered evidence to prove that brooks, rivulets, & springs of water which would otherwise have flowed into the T. above pltf.'s mill-forge, had been intercepted & turned away by defts. We are of opinion that such evidence was admissible with reference to the amount of damage, & with the view of showing that, though pltf. was not damaged merely by the improper introduction of water from these brooks into the canal, but that he was by its being drawn up by the machinery from the lower level into the higher level, since but for this it would ultimately have come to the mill (LORD DENMAN, C.J.).—*ELWELL v. BIRMINGHAM CANAL CO.* (1846), 6 L. T. O. S. 431.

1707. — Admissibility of evidence—Breach of statutory duty.]—*ELWELL v. BIRMINGHAM CANAL CO.*, No. 1706, *ante*.

1708. — Whether notice necessary.]—*ELWELL v. BIRMINGHAM CANAL CO.*, No. 1706, *ante*.

Sect. 6.—Procedure: Sub-sects. 8, 9 & 10, A.]**SUB-SECT. 8.—ENFORCEMENT OF OBEDIENCE—ATTACHMENT.**

See, generally, CONTEMPT OF COURT, ATTACHMENT, & COMMITTAL, pp. 46-88, ante.

1709. Not against Crown.]—R. v. POWELL, No. 1159, ante.

1710. Failure to make a return—After peremptory rule.]—An attachment is never granted without a peremptory rule to return the writ & then an attachment goes for the contempt (HOLT, C.J.)—COVENTRY'S (MAYOR) CASE (1698), 2 Salk. 429; 91 E. R. 373.

1711. —.]—Where no return is made to a writ of mandamus after a rule peremptorily calling on defts. to make such return, the ct. will grant a rule absolute for an attachment.—R. v. STOKESLEY (INHABITANTS) (1839), 3 Jur. 534.

1712. — By one of two joint officers—Attachment against both.]—A mandamus went to the two bailiffs of a town to admit a man into the office of chamberlain, & no return was made to it. Upon this an attachment was moved for:—*Held*: it would be granted against them both, though affidavit was made that one of them was always willing to make a return, but could not, because the other had got the mandamus into his own hands, & would not let him have it, since the ct. considered them both as one officer.—R. v. BRIDGORTH (BAILIFFS) (1728), 1 Barn. K. B. 53; 94 E. R. 37.

1713. — Affidavit of service of rule.]—R. v. NEWCASTLE-ON-TYNE CORPN. (1730), 1 Barn. K. B. 385; 94 E. R. 259.

—Attachment ordered against the mayor of a corpn. for not making a return to a peremptory mandamus within the time prescribed by the writ, though there was no personal service thereof.—R. v. FOWEY (CORPN. (1825), 5 Dow. & Ry. K. B. 614; 2 Dow. & Ry. M. C. 597.

1715. —.]—R. v. ST. MARYLEBONE (VESTRY-MEN), (1838), 2 Jur. 418.

1716. —.]—R. v. WIGAN CORPN. (1845), 4 L. T. O. S. 298; 9 J. P. Jo. 40.

1717. —.]—R. v. NORWICH CORPN. (1846), 10 J. P. Jo. 373.

1718. —.]—R. v. LICHFIELD CORPN. (1849), 13 J. P. Jo. 714.

1719. —.]—R. v. SMITH (1851), 15 J. P. Jo. 98.

1720. Frivolous return.]—An attachment lies for making a frivolous return to a mandamus.—R. v. ROBINSON (1724), 8 Mod. Rep. 336; 88 E. R. 210.

1721. —.]—R. v. THAMES HAVEN DOCK & RY. CO (1816), 10 J. P. Jo. 772.

1722. Allegation that return made on behalf of others.]—The late mayor is the proper officer of a borough to make a return to a writ of mandamus, & if in making such return, whether true or false, as to the matter of fact, he allege that it is the return of others also, when in truth it is not, it is a contempt for which an attachment will be granted.—R. v. HOSKINS (1736), Lee temp. Hard. 188; 95 E. R. 121.

PART VI. SECT. 6, SUB-SECT. 8.

1710 i. Failure to make a return—After peremptory rule.]—No attachment will lie for not making a return to a peremptory mandamus.—R. v. TYENDI NAGA SCHOOL TRUSTEES (1862), 3 P. R. 43.—CAN.

p. — Attachment against one of three joint officers—Other two excused.]—R. v. TYENDINAGA SCHOOL TRUSTEES (1861), 20 U. C. R. 528.—CAN.

1723 i. Disobedience to mandamus.]—Attachment not sequestration is the proper remedy for disobeying a mandamus.—DEMAREST v. MIDLAND RY. CO. (1883), 10 P. R. 82.—CAN.

PART VI. SECT. 6, SUB-SECT. 9.

1730 i. Whether appeal lies—From interlocutory judgment on mandamus.]—Interlocutory judgments on mandamus are not appealable to the Supreme Ct.

1723. Disobedience to peremptory mandamus.]—R. v. TOOLEY (1699), 12 Mod. Rep. 312; 88 E. R. 1343

1724. —.]—R. v. TREGONY (CAPITAL BURGESSSES OF) (1844), 4 L. T. O. S. 121; 8 J. P. 571.

1725. — No disrespect intended to court.]—R. v. LEICESTER UNION, No. 901, ante.

1726. Mandamus to public body—Notice to individual members.]—Where a mandamus has been granted for the election of a mayor under 11 Geo. 1, c. 4, s. 2, & a rule made that public notice should be affixed in the market-place, which has been done accordingly, the ct. will grant an attachment for disobedience of the mandamus against a member of the corpn. who was served with a copy of the rule notwithstanding neither the mandamus nor the original rule was shown him at the time, for the public notice directed by the Act is *prima facie* sufficient. But the application for an attachment would be well answered, if the party could show that he had no notice of the mandamus.—R. v. EDYVEAN (1789), 3 Term Rep. 352; 100 E. R. 615.

1727. — Individuals disobeying must be named in rule for attachment.]—R. v. LEDGARD, No. 1566, ante.

1728. — Where efforts made to comply.]—A peremptory mandamus was issued on the application of the Local Government Board against a corpn. requiring them to execute various sewage works. The mandamus not having been obeyed, writs of attachment were granted against certain members of the corpn., such writs to lie in the office for a limited period, which from time to time had been extended. The corpn. applied that, having satisfied the Local Government Board that the sewage works were in process of execution with due diligence, the time should be still further extended:—*Held*: the writs should still lie in the office, & the matter should stand over generally with liberty to apply.—R. v. WORCESTER CORPN. (1905), 69 J. P. 296; 3 L. G. R. 468, D. C.

1729. Evading service of writ.]—Where a mandamus had been directed to justices to allow rate & they evaded service ct. granted an attachment for contempt.—R. v. EDWARDS (1767), 1 Wm. Bl. 637; 4 Burr. 2105; 1 Bott's Poor Law, 6th ed. 62; 96 E. R. 370.

SUB-SECT. 9.—APPEALS.

1730. Whether appeal lies—From judgment on mandamus.]—Since 9 Ann., c. 20, s. 2, which allows special pleadings to a mandamus, it seems that a writ of error lies on a judgment thereon, because it is in the nature of an action, & costs are given by the statute for that side which prevails, but upon the award of a peremptory mandamus, a writ of error will not lie, there being no plea to it, & therefore not in the nature of a judgment.—DUBLIN (DEAN & CHAPTER) v. R. (1724), 1 Bro. Parl. Cas. 73; 1 E. R. 425; *sub nom.* R. v. DUBLIN (DEAN & CHAPTER), 1 Stra. 536, H. L. Annotation:—*Mentd.* R. v. Charitable Corpn. (1734), Cunn. 95.

under Supreme & Exchequer Courts Act, s. 24 (g).—LANGVIN v. ST. MARO (COMMISSAIRES D'ECOLE DE) (1890), 18 S. C. R. 599.—CAN.

g. — After mandamus obeyed.]—A mandamus having been obeyed, the ct. of appeal should not consider the question of the right to grant the mandamus.—*Re LILLEY & ALLIN* (1891), 19 A. R. 101.—CAN.

1731. — From award on peremptory mandamus.]—DUBLIN (DEAN & CHAPTER) v. R., No. 1730, *ante*.

1732. — ———.]—R. v. ALL SAINTS, WIGAN (CHURCHWARDENS), No. 899, *ante*.

1733. — From refusal to grant peremptory mandamus—Sufficiency of return to original writ.]—The Ct. of K. B. having allowed the sufficiency of a return to a writ of mandamus & therefore refused to grant a peremptory writ, the party applying brought his writ of error:—*Held*: no writ of error lay in this case, it being merely an award of the ct., & not a strict formal judgment.—PENDER v. HERLE (1725), 3 Bro. Parl. Cas. 505; 1 E. R. 1462, H. L.

1734. — From refusal to grant mandamus.]—R. v. ALL SAINTS, WIGAN (CHURCHWARDENS), No. 899, *ante*.

1735. — “Criminal cause or matter”—To grant certificate under Corrupt Practices Prevention Act, 1863 (c. 29).]—The decision of a Div. Ct. discharging a rule for a mandamus to the comrs. appointed to inquire into corrupt practices at a parliamentary election to grant their certificate under the above Act, which certificate if given would be a protection to the witness against criminal proceedings for bribery, does not relate to a “criminal cause or matter,” within the meaning of Jud. Act, 1873 (c. 66), s. 47, & the ct. of appeal is not therefore, deprived of jurisdiction to hear an appeal against such decision.—R. v. HOLL (1881), 7 Q. B. D. 575; 50 L. J. Q. B. 763, C. A.

Annotations:—*Apld.* *Ex p.* Walker (1889), 22 Q. B. D. 384. *Refd.* Preese v. Harding, *Re* Hereford Municipal Petn. (1889), 6 T. L. R. 65.

1736. — ——— To magistrate to hear summons—Under Companies Act, 1862 (c. 89), s. 26.]—An application to a magistrate for a summons against a co. to recover penalties for default in forwarding a list of its members to the registrar of joint stock cos. as required by sect. 26 of the above Act, is a criminal proceeding, & therefore, the judgment of the Q. B. Div. on an application for a mandamus directing the magistrate to hear the summons is a judgment in a “criminal cause or matter” within Jud. Act (c. 66), 1873, s. 47, & no appeal lies therefrom to the Ct. of Appeal.—R. v. TYLER & INTERNATIONAL COMMERCIAL CO., [1891] 2 Q. B. 588; 61 L. J. M. C. 38; 65 L. T. 662; 56 J. P. 118; 7 T. L. R. 720, C. A.

Annotations:—*Consd.* R. v. Garrett, *Ex p.* Sharf, [1917] 2 K. B. 99. *Refd.* R. v. Young, London County J.J. (1891), 61 L. J. M. C. 42. *Mentd.* Rayson v. South London Tram. Co. (1893), 69 L. T. 491; Southport Corpn. v. Birkdale U. D. C. (1897), 76 L. T. 319; Park v. Royalties Syndicate, [1912] 1 K. B. 330; Mousell v. L. & N. W. Ry., [1917] 2 K. B. 836.

1737. — ——— Under Weights & Measures Act, 1878 (c. 49).]—The decision of the Q. B. Div. discharging a rule *nisi* for a mandamus to compel justices to hear a summons under sect. 25 of the above Act against a person for being in possession for use of false or unjust measures is a decision of the High Ct. in a “criminal cause or matter” within Jud. Act, 1873 (c. 66), s. 47, in respect of which no appeal lies to the Ct. of Appeal.—R. v. YOUNG, ETC., LONDON COUNTY J.J. (1891), 61 L. J. M. C. 42; 66 L. T. 16; 8 T. L. R. 178; 36 Sol. Jo. 138; 17 Cox, C. C. 425, C. A.

Annotation:—*Refd.* R. v. Brixton Prison, *Ex p.* Savarkar, [1910] 2 K. B. 1056.

1738. — ——— To state case in respect of order made—Under Public Health Act, 1875 (c. 55), s. 96.]—The Q. B. Div. refused to grant an order *nisi* for a mandamus to compel a stipendiary magistrate who had made an order under sect. 96 of the above Act, for the abatement of a nuisance, to state a case for the opinion of the ct.:—*Held*:

the decision of the Q. B. Div. was given in a “criminal cause or matter” within Jud. Act, 1873 (c. 66), s. 47, & therefore the Ct. of Appeal had no jurisdiction to entertain the application for a mandamus.—*Ex p.* SCHOFIELD, [1891] 2 Q. B. 428; 60 L. J. M. C. 157; 56 J. P. 4; 39 W. R. 580; 7 T. L. R. 615; *sub nom.* Rook v. SCHOFIELD, 64 L. T. 780; 17 Cox, C. C. 303, C. A.

Annotations:—*Consd.* R. v. Young, London County J.J. (1891), 61 L. J. M. C. 42; Payne v. Wright (1892), 61 L. J. M. C. 114; *Ex p.* Pubbrook, [1892] 1 Q. B. 86; R. v. Garrett, *Ex p.* Sharf, [1917] 2 K. B. 99. *Refd.* Seaman v. Burley, [1896] 2 Q. B. 344; R. v. D'Eyncourt (1901), 85 L. T. 501. *Mentd.* R. v. Tyler & International Commercial Co., [1891] 2 Q. B. 588; Rayson v. South London Tram. Co. (1893), 42 W. R. 21; R. v. Davey, *Ex p.* Bishop (1899), 63 J. P. 515; R. v. Manchester Local Profitteering Committee, *Ex p.* L. & Y. Ry. (1920), 89 L. J. K. B. 1089; Toronto Ry. v. Toronto City, [1920] A. C. 446.

1739. — ——— Under London Building Act, 1894 (Amendment) Act, 1898 (c. cxxxvii.).]—A magistrate convicted a person of having erected a building beyond the general line of buildings in a street in London, & made an order for the demolition thereof under the provisions of the London Building Act, 1894 (c. cccxiii.), & the above Act, & refused to state a case for the opinion of the High Ct. The K. B. Div. refused to grant a rule *nisi* for a mandamus to the magistrate to state a case; but a rule *nisi* was granted by the Ct. of Appeal:—*Held*: this was a “criminal cause or matter” within the meaning of Jud. Act, 1873 (c. 66), s. 47, & the Ct. of Appeal had no jurisdiction to entertain the application for a mandamus.—R. v. D'EYNCOURT (1901), 85 L. T. 501; 18 T. L. R. 53; 20 Cox, C. C. 68, C. A.

1740. Time for appeal—From decision on application for prerogative writ—R. S. C., Ord. 58, r. 15.]—An application for a prerogative writ of mandamus is a civil proceeding commenced otherwise than by writ in manner prescribed by R. S. C., Ord. 58, r. 15, & is consequently an action within the definition of that word in Jud. Act, 1873 (c. 66), s. 100, & therefore an order making absolute a rule *nisi* for a mandamus is appealable at any time within six weeks from its date.—R. v. WESTMINSTER ASSESSMENT COMMITTEE, *Ex p.* LONDON & PROVINCIAL VICTUALLERS, LTD., R. v. ISLINGTON ASSESSMENT COMMITTEE, *Ex p.* ROYAL AGRICULTURAL HALL CO., [1917] 2 K. B. 215; 86 L. J. K. B. 1161; 116 L. T. 641; 81 J. P. 221; 61 Sol. Jo. 299; 15 L. G. R. 362, C. A.; *affd.*, *sub nom.* ROYAL AGRICULTURAL HALL CO. v. ISLINGTON ASSESSMENT COMMITTEE, [1918] A. C. 525, H. L.

Security for costs of appeal—Appeal from refusal of county court judge to grant mandamus—Order in nature of a mandamus.]—See COUNTY COURTS, Vol. XIII., p. 536, No. 883.

SUB-SECT. 10.—COSTS.

A. In General.

See C. O. R., r. 261.

1741. Discretion of court.]—It is in the discretion of the ct. to leave parties proceeding by prerogative writs to bear their own costs, even though they are successful.

The parties here who have applied for the mandamus have no doubt a right to have the point of law decided, but the ct. is not bound to give them their costs (POLLOCK, B.).—R. v. HARDING (1890), 6 T. L. R. 175, D. C.

1742. Whether awarded to prosecutor—Refusal to quash return.]—Upon a motion by the prosecutor of a mandamus for his costs, under 1 Will. 4, c. 21, s. 6, the ct. will, in their discretion, grant them, though it has refused to quash the return

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to the mandamus.—*R. v. HARNHAM ROADS TRUSTEES* (1841), 5 Jur. 408.

1743. Whether awarded to prosecutor—Partially successful.]—The traverser of a return to a writ of mandamus is not entitled to the costs of issues taken on the return, & found for him at the trial, unless he succeeds on the whole.—*EMERY v. MALMESBURY CORPN.* (1842), 3 Q. B. 577; 6 Jur. 1107; 114 E. R. 628; *sub nom. R. v. MALMESBURY CORPN.*, 3 Gal. & Dav. 482; 11 L. J. Q. B. 318.

1744. Awarded to public functionaries endowed under statute—Compelled to come before court for mandamus to obtain dues.]—*R. v. ST. SAVIOUR'S, SOUTHWARK*, No. 1808, *post*.

1745. Whether awarded to successful party.]—Two parishioners, for themselves & other parishioners having entered traverses to the denials to a writ for mandamus:—*Held*: (1) they had thereby sufficiently appeared as prosecutors of the mandamus, issues having been joined & found for the Crown; (2) all prosecutors of a mandamus were under 1 Will. 4, c. 21, entitled to damages & costs, whether an action for a false return could be sustained by them or not.—*R. v. FALL* (1842), 1 Q. B. 653; 13 L. J. Q. B. 187; 113 E. R. 1282; *sub nom. FALL v. R.*, 2 Gal. & Dav. 803, Ex. Ch.; *affg. S. C. sub nom. R. v. FALL* (1841), 1 Q. B. 636; *subsequent proceedings, sub nom. R. v. FALL* (1843), 7 J. P. 224.

Annotations:—*As to* (2) *Refd. R. v. James* (1843), 7 J. P. 383; *Dods v. Evans* (1864), 15 C. B. N. S. 621; *Fotherby v. Met. Ry.* (1866), L. R. 2 C. P. 188; *It. v. Marshland Smeeth & Fen District Comrs.*, [1920] 1 K. B. 155. *Generally, Mentd. R. v. Kelk* (1841), 1 Q. B. 660.

1746. —.]—*R. v. EASTERN COUNTIES RY. CO.*, No. 1535, *ante*.

1747. —Mandamus to local authority to elect.]—*R. v. CAMBRIDGE CORPN.* (1815), 4 Q. B. 801; 1 New Mag. Cas. 174; 14 L. J. Q. B. 82; 4 L. T. O. S. 290; 9 J. P. 229; 9 Jur. 11; 114 E. R. 1099.

Annotation:—*Apld. Re Mandamus, Application for, to Stratford-on-Avon Corpn.* (1886), 2 T. L. R. 431.

1748. —.]—Where on a casual vacancy for the election of a town councillor no proper nomination is made, a mandamus will be granted, on the application of a Burgess of the borough, to hold an election & the ct. will order the costs of the application to be paid by the corpn.—*Re MANDAMUS, APPLICATION FOR, to STRATFORD-ON-AVON CORPN.* (1886), 2 T. L. R. 431, D. C.

See, further, LOCAL GOVERNMENT.

1749. —Mandamus to pay costs.]—*R. v. MIDDLESEX JJ.* (1847), 11 J. P. Jo. 886.

Annotation:—*Refd. R. v. Cheshire JJ.* (1848), 12 J. P. Jo. 101.

1750. —.]—*R. v. CUMBERLAND JJ.*, *R. v. LANCASHIRE JJ.* (1848), 5 Dow. & L. 430; 3 New Sess. Cas. 202; 2 Saund. & C. 287; 17 L. J. M. C. 133; 11 L. T. O. S. 274; 12 J. P. Jo. 474; 12 Jur. 1048.

Annotations:—*Apld. R. v. Surrey JJ.* (1850), 14 Q. B. 684. *Refd. R. v. Lancashire JJ.* (1849), 3 New Mag. Cas. 155.

1751. —.]—*R. v. JONES, ETC. ME-RIONETHSHIRE JJ.* (1849), 13 J. P. Jo. 87.

1752. —.]—*R. v. CARDIGAN (LORD) (LORD OF CORBY MANOR) & HALL (STEWART OF CORBY MANOR)* (1847), 11 J. P. Jo. 421.

1753. —.]—*R. v. CHESHIRE JJ.*, No. 1819, *post*.

1754. —.]—*R. v. NEWPORT (SHROPSHIRE)*

INCLOSURE ACT TRUSTEES, Ex p. FISHER (1848), 12 J. P. Jo. 406.

1755. —Liability of party showing cause.]—*R. v. LONDON JJ.* (1847), 9 Q. B. 41; 2 New Sess. Cas. 568; 8 L. T. O. S. 387; 11 J. P. Jo. 85; 115 E. R. 1191.

Annotations:—*Apld. R. v. Cheshire JJ.* (1848), 12 J. P. Jo. 104. *Consd. R. v. Lancashire JJ.*, *Batley v. Ashton-under-Lyne* (1848), 12 J. P. Jo. 474. *Mentd. R. v. Eyre* (1857), 7 E. & B. 609; *R. v. Sussex JJ.* (1862), 2 B. & S. 664.

1756. —.]—The rule that a party who unsuccessfully opposes a rule for a mandamus to set right the decision of an inferior ct., must pay the costs occasioned by the mandamus, applies to a party showing cause in the first instance.—*R. v. DERBY (RECORDER)* (1851), 2 L. M. & P. 292.

1757. —Liability of person litigating matter up to time of showing cause—Cause not actually shown.]—A party who induces quarter sessions to act upon an objection which turns out to be ill-founded, & to refuse to hear an appeal & who substantially litigates the point up to the time of cause being shown against a rule which had been obtained for a mandamus to the sessions to hear the appeal, will have to pay the costs of the rule, though he does not actually show cause against the rule.—*R. v. BIRMINGHAM UNION GUARDIANS* (1874), 44 L. J. M. C. 48; *sub nom. LUDLOW UNION GUARDIANS v. BIRMINGHAM UNION GUARDIANS*, 31 L. T. 587.

1758. —Mandamus to sessions to hear appeal.]—The right to the costs of a mandamus to the sessions to hear an appeal does not depend upon whether or not cause has been vexatiously shown against the rule for the writ, but upon whether or not unsuccessful cause has at all been shown.

The right to costs in these cases does not in any manner depend upon the fact of whether or not the opposition was vexatious; it may have been a very proper thing to have shown cause, & it would be right that the successful party should have the costs (*COLERIDGE, J.*).—*R. v. MIDDLESEX JJ.* (1851), 17 L. T. O. S. 83; 15 J. P. 355; 15 Jur. 907.

Annotation:—*Refd. R. v. Ingham* (1852), 17 Q. B. 884.

1759. —Court will not consider merits on application.]—The general rule that the party who succeeds upon an application for a mandamus is entitled to his costs from the party showing cause will be strictly adhered to. The fact that the party who obtained the writ of mandamus has failed in the ct. below is no ground for departing from that rule, nor will the ct. enter at all upon the consideration of the merits upon an application for the costs of the writ.—*R. v. LANCASHIRE JJ.* (1849), 3 New Mag. Cas. 155; 13 L. T. O. S. 160; 13 J. P. 315.

1760. —.]—On motion against a magistrate under Justices Protection Act, 1848 (c. 44), s. 5, as well as on motion for mandamus, the general rule is that the ct. will order the unsuccessful party to pay costs, & will not, on the motion for costs, enter into the merits of the original application.—*R. v. INGHAM* (1852), 17 Q. B. 884; 21 L. J. M. C. 125; 18 L. T. O. S. 303; 16 J. P. 423; 16 Jur. 526; 117 E. R. 1520.

Annotations:—*Mentd. R. v. Pratt* (1855), 3 C. L. R. 826; *St. Mary, Islington Vestry v. Goodman* (1889), 23 Q. B. D. 154.

1761. —.]—*R. v. GREAT YARMOUTH JJ.* (1855), 1 Jur. N. S. 476; 3 W. R. 455.

PART VI. SECT. 6, SUB-SECT. 10.**I. L. T. 6.—IR.**

1744i. Awarded to public functionaries—Compelled to apply for mandamus.]—*GOODBODY v. GILTRAP* (1903), 38

1755i. Whether awarded to successful party—Liability of party unsuccessfully resisting mandamus.]—It is the general

rule to order the person unsuccessfully resisting a writ of mandamus to pay all costs occasioned thereby.—*R. v. ANTRIM JJ.* (1900), 34 I. L. T. 57.—**IR.**

1762. —]—Upon a rule for mandamus to inspect the register of debts, co. by one of the proprietors, defts. opposed on the ground that appct. was prompted by improper motives. Although the majority made the rule absolute, one of the ct. expressed his opinion that the object of the application was not justifiable, & dissented from the decision:—*Held*: this was no ground for setting aside the ordinary rule by which costs are given to the successful party.—*R. v. WILTS & BERKS CANAL NAVIGATION* (1874), 30 L. T. 498, D. C.

1763. —]—*R. v. LONDON COUNTY COUNCIL* (1892), 8 T. L. R. 394; 36 Sol. Jo. 309, D. C.

1764. —]—*Unless in special circumstances.*—As a general rule, the costs of an application for a mandamus will follow the event, under 1 Will. 4, c. 21, s. 6, unless a very strong ground of exemption be shown on the other side.—*R. v. OXTED OVERSEERS* (1846), 2 New Sess. Cas. 357.

Annotations:—*Consd. R. v. Cheshire JJ.* (1848), 12 J. P. Jo. 104; *R. v. Cumberland JJ.*, *R. v. Lancashire JJ.* (1848), 3 New Mag. Cas. 25; *R. v. Lancashire JJ.*, *Batley v. Ashton-under-Lyne* (1848), 12 J. P. Jo. 474.

1765. —]—*R. v. SURREY JJ.* (1850), 14 Q. B. 684; 4 New Mag. Cas. 39; 19 L. J. M. C. 171; 14 L. T. O. S. 416; 14 J. P. 76; 14 Jur. 457; 117 E. R. 264.

Annotations:—*Consd. R. v. Middlesex JJ.* (1851), 15 J. P. 355. *Reid. R. v. Burrows* (1855), 24 L. T. O. S. 255. *Mentd. R. v. Ingham* (1852), 17 Q. B. 884.

1766. —]—*R. v. NEWBURY CORPN.* (1842), 2 Gal. & Dav. 109; 11 L. J. Q. B. 149; 6 Jur. 821.

1767. —]—*R. v. SURREY JJ.* (1846), 9 Q. B. 37; 15 L. J. M. C. 117; 7 L. T. O. S. 204; 10 Jur. 432; 10 J. P. Jo. 356; 115 E. R. 1189.

1768. —]—*R. v. HARDEN*, No. 1795, *post*.

1769. —]—*Application for mandamus only partially successful.*—If distinct demands are made for payment of two sums of money, both of which are refused, & on an application for a mandamus to compel the payment of them, the ct. grants the application as to one, but refuses it as to the other, on the ground that the party is not entitled to it, the ct. will nevertheless allow appct. his costs, under 1 Will. 4, c. 21, s. 6.—*Ex p. TURNER* (1838), 1 Will. Woll. & H. 305.

1770. —]—*Awarded to defendant—Applicant unable to support rule.*—An individual obtained a rule nisi for a mandamus to obtain compensation from a railway co., for an injury done to his business by the railway. When the rule came on for argument, he, in consequence of being pauperised by the loss of his trade, was unable to support his rule, & it was discharged:—*Held*: he must pay the costs occasioned by his application to the co.—*R. v. LONDON & BLACKWALL RY. CO.* (1840), 4 Jur. 859

1771. —]—*Prosecutor omitting to proceed.*—Where, after a return had been made, the prosecutor omitted to proceed with a mandamus, the ct. obliged him to elect either to proceed or pay the costs of the mandamus under 1 Will. 4, c. 21, s. 6.—*R. v. DARTMOUTH CORPN.* (1843), 2 Dowl. N. S. 980; 12 L. J. M. C. 83; 1 L. T. O. S. 151; 7 J. P. 449; 7 Jur. 629.

1772. —]—*On showing proper cause.*—Where a peremptory mandamus was obtained, to which a return was made, upon which deft. obtained judgment, the ct. granted him the costs of the writ, & such costs having been demanded before application to the ct., the costs of the rule.—*R. v. SCOTT* (1843), 7 Jur. 993.

1773. —]—]—Upon the argument of a rule nisi for a mandamus to licensing justices, the ct. has jurisdiction to grant costs to a person who successfully opposes the rule being made absolute.—*R. v. WEST RIDING OF YORKSHIRE JJ.*, *Ex p. SHAW*, [1898] 1 Q. B. 503; 67 L. J. Q. B. 279; 78 L. T. 47; 62 J. P. 197; 46 W. R. 334; 14 T. L. R. 89; 42 Sol. Jo. 135, D. C.

1774. —]—*Rule nisi withdrawn before cause shown.*—A rule nisi was obtained for a mandamus to the recorder of L., to hear an appeal, but before cause was shown, it was withdrawn, but without any offer to pay costs:—*Held*: it must be discharged with costs.—*R. v. LEEDS (RECORDER)* (1843), 2 Q. B. 547, n.; 1 L. T. O. S. 167; 7 J. P. 290; 114 E. R. 215, n.

1775. —]—*Mandamus obeyed.*—*R. v. LONDON & BRIGHTON RY. CO. (DIRECTORS)* (1843), 2 L. T. O. S. 127.

1776. —]—*R. v. GREAT WESTERN RY. (DIRECTORS)* (1843), 2 L. T. O. S. 126.

1777. —]—*R. v. GREAT NORTH OF ENGLAND RY. CO.*, *Ex p. DODDS* (1844), 3 L. T. O. S. 101; 8 J. P. Jo. 309.

1778. —]—*A local Act empowered the inhabitants of a parish to raise money on the security of rates, & to make rates for the payment of interest & principal, & also provided for the making of the necessary rates by certain trustees in default of the inhabitants:—Held*: the lenders were entitled to require the inhabitants to make the necessary rates, & in default, to compel them to do so by mandamus, & the power of the trustees to make these rates was not a reason why the lenders should not have their costs of an application for a writ of mandamus to the inhabitants, rendered unnecessary by payment by them made after the time for showing cause against the rule nisi for the writ.—*R. v. ISLINGTON (CHURCHWARDENS & OVERSEERS)* (1851), 15 J. P. 741.

1779. —]—*Issue of writ without opposition.*—A mandamus issued without opposition to the justices of W., directing them to enforce a conviction & a rule nisi having been obtained, calling on them to show cause why they should not pay the costs of the application for the mandamus, of the mandamus, & of the rule:—*Held*: the circumstance of their not having opposed the application was no ground for subjecting them to costs, & the rule would be discharged with costs.

Semble: the application should have been made against the individual justices who acted in the matter.—*R. v. WARWICKSHIRE JJ.* (1836), 2 Har. & W. 420.

1780. —]—*R. v. WHITCHURCH (VICAR)* (1875), 39 J. P. Jo. 101.

1781. —]—*Costs previously tendered by defendant.*—*R. v. MERIONETHSHIRE JJ.* (1848), 12 L. T. O. S. 213; *sub nom. R. v. —*, *MERIONETHSHIRE JJ.*, 12 J. P. Jo. 789.

1782. —]—*Error of court below.*—A sheriff, on a compensation case under a railway Act, directed the jury that claimant's case was not within the Act & they so found. A rule was afterwards made absolute for a mandamus to the sheriff to execute the inquiry, upon the ground that he was mistaken:—*Held*: the parties opposing a rule for a mandamus should not pay the costs of the other side in moving & making that rule absolute, as the necessity for the rule arose from the mistake of the judge.—*R. v. MIDDLESEX (SHERIFF), WALKER v. LONDON & BLACKWALL RY. CO.* (1843), 5 Q. B. 365; 13 L. J. Q. B. 14; 114 E. R. 1287; *sub nom.*

1784 i. —]—*Unless in special circumstances.*—Where resistance is made to the granting of a mandamus, costs will be allowed to the successful party, except in special circumstances.—*R. v. HURSE* (1885), 2 N. Z. L. R. 94.—*N.Z.*

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WALKER v. BLACKWALL RY. Co., 2 L. T. O. S. 167; 7 Jur. 1154.

Annotations :—**Consd. R. v. Surrey JJ.** (1846), 9 Q. B. 37.
Reid. R. v. Cheshire JJ. (1848), 12 Jur. 161.

1783. ——— *In accordance with established practice.*—A peremptory writ of mandamus issued to a ct. of quarter sessions, directing the justices to erase from the records of the ct. an entry made at a previous sessions, which was manifestly wrong, & made without jurisdiction, but in accordance with the practice of the sessions, & which entry had been made on application by resps. without the knowledge of applts. Upon motion for costs to be paid by resps.:—*Held*: as the erasure of such entry was an act which the sessions could not do, unless under the authority of a mandamus, & as the entry was made by the fault of the justices, or the clerk of the peace, the ct. would not order resps. to pay the costs.—**R. v. WEST RIDING OF YORKSHIRE JJ., CRICH v. SHEFFIELD** (1844), 1 Dav. & Mer. 590; 1 New Sess. Cas. 98; 2 L. T. O. S. 420; 8 J. P. 244.

1784. ——— *Mandamus against justices.*—**R. v. ONSLOW, ETC., GLOUCESTERSHIRE JJ.** (1845), 9 J. P. Jo. 388.

1785. ———.]—**R. v. CHESHIRE JJ.**, No. 1819, *post*.

1786. ——— *Right to mandamus doubtful.*—If the party applying for a mandamus is entitled to have that done for which he asks that the mandamus should issue, but if the ct. thinks that a writ should not be taken out, it has no power to give costs to appct. under 1 Will. 4, c. 21, s. 6.—*Ex p. IVEMEY* (1845), 9 Jur. 371.

1787. ———.]—The ct. has a discretion in granting the costs of an application for a mandamus, & will generally order that the costs shall be paid to the successful party, where there has been a wrongful refusal to do the act which the ct. afterwards, by mandamus, compels the party to do, or where the party applying for the writ ultimately fails, & where, in either case, no blame has attached to the successful party.

A mandamus had gone, directing parties to do an act which it is not clear they were in default for not doing at that time, but which, nevertheless, they then did, & returned that they had done it:—*Held*: the ct. would refuse to compel them to pay the costs of the mandamus.—**R. v. LANGRIDGE** (1855), 24 L. J. Q. B. 73; 24 L. T. O. S. 224; 19 J. P. 56; 1 Jur. N. S. 64; 3 W. R. 165; 3 C. L. R. 361.

1788. ———.]—As appct. presses for his writ of mandamus the rule must be made absolute. We shall not however grant appct. costs. The whole matter does not justify him in coming to this ct. & setting its machinery in motion (LORD READING, C.J.).—**R. v. YORKSHIRE NORTH RIDING APPEAL TRIBUNAL, Ex p. BARKER** (1916), 86 L. J. K. B. 599; 115 L. T. 864; 81 J. P. 23; 14 L. G. R. 1186.

1789. ——— *No improper conduct imputed to defendants.*—Upon a mandamus directing the mayor to insert the names of a person upon the burgess roll, in pursuance of Municipal Corpn. (General) Act, 1837 (c. 78), s. 24, which gives the ct. a discretion as to costs, the ct. refused to order them in favour of the prosecutor, there being no reason to impute improper conduct to the mayor.—**R. v. LICHFIELD CORPN.** (1842), 2 Gal. & Dav. 10; 6 Jur. 624.

1790. ———.]—Where the ct. granted a mandamus to a vicar & churchwarden to proceed to the election of a churchwarden, on the ground that

the vicar had improperly closed the poll, but no corrupt motive was imputed to defts. & the prosecutor failed at the election, the ct. refused to make defts. pay the costs of the mandamus.—**R. v. ASTON (VICAR & CHURCHWARDENS)** (1844), 2 L. T. O. S. 368; 8 J. P. Jo. 120.

1791. ——— *Justices acting bonâ fide.*—**R. v. WEST RIDING JJ.** (1888), 47 J. P. 804.

1792. ———.]—**R. v. COX** (1884), 48 J. P. 440.

1793. ——— *Defendant holder of municipal office—Writ issued against predecessor—Whether party showing cause liable.*—**R. v. JAMES** (1843), 1 L. T. O. S. 287; 7 J. P. 383.

1794. ———.]—**R. v. BURROWS** (1855), 24 L. T. O. S. 255; 19 J. P. Jo. 115.

1795. ——— *Statute judicially construed for first time—Original resistance to mandamus well founded.*—A. was sued in the county ct. to recover the costs awarded against him for the expenses, etc. of the guardians of a union, in proceeding against him for a nuisance in a ditch, under the provisions of Nuisance Removal & Disease Prevention Act, 1848 (c. 123). At the trial he objected that he was not the owner of the ditch, & that, as the title to land came into question, the ct. had no jurisdiction to try the case, & the judge refused to give judgment. Upon a motion to Q. B. for a mandamus:—*Held*: upon a proper construction of sect. 3 of the Act, judicially construed for the first time, the county ct. had jurisdiction, the rule would be made absolute.

Upon an application subsequently made to this ct. for the costs of the rule for the mandamus against deft. in the action, who had shown cause against it:—*Held*: the special circumstances in the case exempted deft. from the payment of the costs.—**R. v. HARDEN** (1854), 23 L. J. Q. B. 127; 22 L. T. O. S. 228; 18 Jur. 147; 2 W. R. 164.

Annotation :—**Mentd. R. v. Glossop, Ex p. Robinson** (1854), 2 W. R. 526.

1796. ——— *Conduct necessitating application for mandamus.*—Where, through the delay of pltf., it has been necessary for defts., a public board, to have the authority of a mandamus to justify them in paying a sum of money:—*Held*: a rule absolute calling on them to pay the costs of the mandamus would be refused.—**R. v. BURLEIGH BOARD OF HEALTH** (1859), 1 L. T. 92.

1797. ——— *Blameworthy conduct.*—**R. v. ARDINGSLAND (VICAR)** (1859), 23 J. P. Jo. 403.

1798. ———.]—Where a poll was closed too soon, the main cause of it being a great disturbance caused by the agent of one of the candidates, who also succeeded in getting a mandamus for a new election:—*Held*: costs of the mandamus against the churchwardens would be refused, on the ground that the party who obtained it was chiefly blameable.—**R. v. GRAHAM** (1862), 26 J. P. 103.

1799. ——— *Agreement between parties not to raise technical objections—To obtain opinion of court upon construction of statute.*—A rule nisi for a mandamus having been obtained, it was agreed that no technical objections should be taken, in order to obtain the opinion of the ct. upon the construction of a local Act of Parliament. The rule was, after argument, made absolute. Upon a separate application for the costs of that rule against the parties to whom the writ was directed, the ct. refused to grant it, it appearing that if there had been no arrangement to the contrary they might have defeated the rule for want of any refusal by them to do the act commanded by the writ.—**R. v. ST. MARY'S, NEWINGTON (GOVERNORS & GUARDIANS)** (1849), 12 L. T. O. S. 425.

1800. — Rectification of mistake by defendant—Further prosecution of rule unnecessary.]—E., the vicar of a parish, at an Easter election of churchwardens, refused to grant a poll demanded by D., one of two candidates. A rule *nisi* for a mandamus was obtained on June 11, & afterwards made absolute on June 21, & then a writ of mandamus issued, to which E. made a return that he had obeyed the rule. E. had on June 16, before the rule was made absolute, given notice that he had refused the poll under a mistake, but would hold another vestry, & grant a poll, which he forthwith did:—*Held*: D. was not entitled to his costs of the rule & writ of mandamus, because on E.'s submission after the rule *nisi* was obtained, he had done all in his power to correct the mistake, & the further prosecution of the rule was quite unnecessary.—*R. v. ETTY* (1877), 42 J. P. 36.

1801. — Interest in securing mandamus.]—*R. v. HARDING*, No. 1741, *ante*.

1802. — Application only with view to costs.]—The ct. will, in the exercise of its discretion, refuse the costs of a rule for a mandamus, where the application for such rule appears to have been made with the view only to the costs.—*R. v. ROMNEY MARSH* (LORDS, BAILIFFS & JURATS) (1854), 24 L. T. O. S. 135; 3 W. R. 73.

1803. Upon judgment awarding peremptory mandamus.]—*R. v. SOUTH-EASTERN RY. CO.*, No. 1197, *ante*.

1804. Third party showing cause—Not entitled to costs on discharge of rule—Mandamus against justices.]—When a rule *nisi* for a mandamus to justices to hear an appeal is discharged with costs to be paid to the justices by applts., the parish which appeared to support the refusal of the justices is not entitled to costs, although served with the rule *nisi*, & although the justices did not appear by counsel.—*It. v. STAFFORDSHIRE JJ.* (1832), 1 Dowl. 507.

1805. What costs may be awarded—Costs of application & writ—Costs of return & subsequent proceedings.]—1 Will. 4, c. 21, s. 6 applies not only to the mere costs of the application & of the writ of mandamus, but to the costs of the return & the subsequent proceedings.—*It. v. ST. PANCRAS* (CHURCHWARDENS & OVERSEERS) (1843), 2 Dowl. N. S. 955; 1 L. T. O. S. 151; 7 J. P. 435; 7 Jur. 1060.

1806. — Costs of showing cause against original rule—Treble costs.]—*R. v. KELK* (1841), 1 Q. B. 600; 1 Gal. & Dav. 127; 10 L. J. Q. B. 188; 5 Jur. 888; 113 E. R. 1284.

*Annotations:—**Reid. R. v. Fall* (1841), 1 Q. B. 636. *Mentd. Elwell v. Birmingham Canal Co.* (1846), 6 L. T. O. S. 431.

1807. — —.]—*R. v. PEARSON, ETC.*, GREAT YARMOUTH, SUFFOLK, JJ. (1855), 25 L. T. O. S. 103; 19 J. P. 294; *sub nom. R. v. GREAT YARMOUTH JJ.*, 1 Jur. N. S. 476; 3 W. R. 455.

1808. Against whom order made—When return of inhabitants quashed—Inhabitants actually making return.]—Where a return to a mandamus, showing cause for disobedience to the writ, is made by the inhabitants of a parish, if the return is quashed, the ct. in granting costs, will ascertain which of the inhabitants joined in making the

return, & make the rule for costs absolute against them.

Where public functionaries, such as a clergyman or schoolmaster, endowed under an Act of Parliament, are obliged to come before the ct. for a mandamus to obtain their dues under such Act of Parliament, the ct. will award costs to them.—*R. v. ST. SAVIOUR'S SOUTHWARK* (1838), 7 Ad. & El. 925; 3 Nev. & P. K. B. 354; 1 Will. Woll. & H. 234; 7 L. J. M. C. 59; 2 J. P. 359; 2 Jur. 565; 112 E. R. 718.

*Annotation:—**Reid. R. v. West Riding of Yorkshire JJ.*, *Crich v. Sheffield* (1844), 1 New Sess. Cas. 98.

Payment of costs out of corporate funds.]—See CORPORATIONS, Vol. XIII., p. 364, No. 984.

Costs of mandamus to examine witnesses.]—See EVIDENCE.

By & against licensing justices.]—See INTOXICATING LIQUORS.

B. For and against the Crown.

See, generally, CONSTITUTIONAL LAW, Vol. XI., pp. 530 *et seq.*

1809. Not given for or against Crown.]—Where the Crown is a party to the argument of a rule for a prerogative writ of mandamus, the ct. has no jurisdiction to give costs either for or against the Crown.—*R. v. CANTERBURY* (ARCHBP.), [1902] 2 K. B. 503; 71 L. J. K. B. 932; 86 L. T. 450; 66 J. P. 455; 50 W. R. 476; 18 T. L. R. 388; 46 Sol. Jo. 339, D. C.; *subsequent proceedings*, [1903] 1 K. B. 289, C. A.

*Annotation:—**Mentd. Thomas v. Pritchard*, [1903] 1 K. B. 209.

1810. Awarded against Crown officials—Costs of mandamus to compel fulfilment of duties.]—A mandamus was obtained ordering the Special Comrs. of Income Tax to allow exemption from income tax & to make repayment of income tax deducted in respect of trust property left for charitable purposes:—*Held*: (1) as the mandamus could be directed to the comrs. as persons charged with a statutory obligation to perform a duty, which they had failed to discharge, the ct. had jurisdiction as a necessary consequence to direct that they should pay the costs; (2) the mere fact that the Crown was interested in the proceedings & that the law officers had been instructed to appear did not invest the comrs. with the privileges of the Crown so as to make the common doctrine apply.—

If the comrs. were merely the servants of the Crown it is quite clear that the order for the mandamus would not lie. In this case it seems to me it is clear that these Special Comrs. are not acting merely as servants of the Crown. It may be that they are answerable to the Crown, but they are also answerable to the subject who is entitled to exemption (BRAY, J.).—*R. v. INCOME TAX SPECIAL PURPOSES COMRS.*, *Ex p. BARNARDO'S* (DR.) HOMES NATIONAL INCORPORATED ASSOCN., [1920] 1 K. B. 26; 89 L. J. K. B. 194; 35 T. L. R. 684; 63 Sol. Jo. 790, D. C.; *reversd.* on other grounds, [1920] 1 K. B. 468, C. A.; *sub nom. BARNARDO'S HOMES v. SPECIAL INCOME TAX COMRS.*, [1921] 2 A. C. 1, H. J.

1806 i. What costs may be awarded—Costs of showing cause against rule—Half costs—Affidavits unnecessarily long.]—*Re SOUTH FREDERICKSBURG PUBLIC SCHOOL TRUSTEES & SOUTH FREDERICKSBURG CORPN.* (1876), 37 U. C. R. 534.—CAN.

r. — Whether court or chamber costs.]—Where a summary application for a mandamus was made to the ct., costs of a chambers application only were allowed to appt., where the

circumstances did not justify the imposition of a larger amount of costs than was sufficient to indicate that resps. were in the wrong.—*Re BROOKFIELD & BROOKE SCHOOL TRUSTEES* (1888), 12 P. R. 485.—CAN.

s. No costs awarded—Where rule discharged, both parties being wrong.]—*Re POUSSETT & LAMTON COUNTY* (1862), 22 U. C. R. 80.—CAN.

t. — Applicant abandoning right

*thereto.]—*MASON v. GOLDFIELDS (1912), 23 O. W. R. 266; 4 O. W. N. 300; 6 D. L. R. 909.—CAN.

u. Whether judgment for costs given in lower court may be vacated by superior court.]—On an application for a mandamus to a lower ct. to hear an action, the supreme ct. may vacate the judgment for costs given in the lower ct.—*GOLDING v. EYRE-KENNY & TAINE* (1905), 25 N. Z. L. R. 897.—N.Z.

Sect. 6.—Procedure: Sub-sect. 10, C. & D. Part VII. Sect. 1.]

C. Application for—Enforcement of Payment.

1811. Application—Whether by separate motion—After rule absolute.]—Under 1 Will. 4, c. 21, s. 6, the costs of a mandamus, & of applying for it, may be obtained of the ct. by a distinct motion, after the issuing of the writ.—*R. v. KIRKE* (1834), 5 B. & Ad. 1089; 110 E. R. 1095.

Annotations:—Refd. R. v. Haruham Roads Trustees (1841), 5 Jur. 408; *R. v. St. Peters College, Cambridge* (1841), 1 Q. B. 314.

1812. — — — — — **Where a rule for a mandamus is made absolute, the costs of the application must be made the subject of a separate application, & will not be considered by the ct. on disposing of the rule.**—*R. v. SALOP JJ.* (1837), 0 Dowl. 28; Will. Woll. & Dav. 598; 1 J. P. 187; 1 Jur. 868.

Annotations:—Refd. R. v. Herefordshire JJ. (1840), 8 Dowl. 638. *Mentd. R. v. West Riding of Yorkshire JJ.* (1844), 14 L. J. M. C. 11; *Norton v. Salisbury, Town Clerk* (1846), 4 C. B. 32; *Ex p. Leeds Overseers* (1847), 2 New Sess. Cas. 595; *It. v. Leeds Recorder* (1817), 8 Q. B. 623.

1813. — — — — — **Not awarded on making rule absolute.]**—When a rule under Justices Protection Act, 1818 (c. 44), s. 5, is obtained, which does not in terms ask for costs, & no cause is shown against it, the ct., in making it absolute, will not do so with costs.—*R. v. MOULTRIE* (1849), 13 L. T. O. S. 211; 13 J. P. Jo. 362.

1814. — — — — — **The ct. will not grant costs on making a rule for a mandamus absolute, upon a mere affidavit of service, but on affidavits showing ground for believing that the litigation is at an end, & that the defts. have had notice that the application will be made for costs, at the time the rule is made absolute, the ct. will make it absolute with costs.**—*R. v. EAST ANGLIAN RY. CO.* (1853), 2 E. & B. 475; 18 Jur. 69; 118 E. R. 845.

1815. — — — — — **Unless litigation at end.]**—Although the general practice upon making absolute a rule for a mandamus is not to give costs but to require a separate motion to be made for them, yet where upon making such rule absolute it appears that the litigation is at an end, the ct. will not require a separate motion to be made for the costs but give them as a part of the rule.—*R. v. BRIGHTON & SOUTH COAST RY. CO.* (1864), 10 L. T. 496.

1816. — — — — — **Use of affidavits.]**—On motion for costs of mandamus, the prosecutor cannot refer to affidavits used by him in applying for the mandamus, unless the rule for costs be drawn up on reading such affidavits.—*R. v. ST. PETER'S COLLEGE, CAMBRIDGE (MASTER & FELLOWS)* (1841), 1 Q. B. 314; 5 Jur. 408; 118 E. R. 1152.

1817. — — — — — **Time for—Not before return to writ.]**—A rule *nisi* was obtained for a mandamus, commanding a magistrate to hear a claim made against a railway co. for compensation under their Act, which was opposed by the co. only, & made

absolute. A mandamus issued thereon. Afterwards prosecutor applied for the costs of his application for the mandamus & of the writ, but did not show what had been done since the mandamus issued, or account for not stating the proceedings further:—*Held*: the application was too soon, as it was made before any motion had been made to the writ.—*R. v. BINGHAM* (1843), 4 Q. B. 877; 1 L. T. O. S. 255; 7 J. P. 657; 114 E. R. 1127.
Annotation:—Refd. R. v. Blackwall Ry. (1843), 8 J. P. 7.

1818. — — — — — **Within two terms after compliance with writ.]**—When a mandamus has been issued to the justices at quarter sessions to enter continuances & hear an appeal, an application for the costs incurred in applying for & issuing the mandamus, & the proceedings incident thereupon, should, in general, be made within two terms after the mandamus has been obeyed.—*R. v. KENT JJ.* (1867), 7 B. & S. 398; 36 L. J. M. C. 130; 16 L. T. 322; 15 W. R. 743.

1819. — — — — — **Previous demand & refusal unnecessary.]**—(1) Where a party unsuccessfully opposes a rule for a mandamus to set right the sessions, who have wrongly decided a matter in his favour, he will in general be made to pay the costs of the mandamus, unless, perhaps, the matter is wrongly decided by the ct. itself, uninfluenced by any improper objection on his part.

(2) On an application for a rule for the payment of such costs, it is not necessary that a demand of the costs from the opposite party should have been previously made.—*R. v. CHESHIRE JJ.* (1848), 5 Dow. & L. 426; 2 New Mag. Cas. 402; 2 Saund. & C. 186; 10 L. T. O. S. 350; 12 Jur. 161; 12 J. P. Jo. 101.

Demand & refusal—As conditions precedent to issue of mandamus.]—*See* Sect. 1, sub-sect. 3, D., *ante*.

Mandamus to pay.]—*See* Nos. 1749-1751, *ante*.

D. Security for Costs.

1820. When ordered—Not on ground of poverty of prosecutor—Or that application made at instigation of third parties.]—The ct. will not compel a relator in a mandamus who is interested in the matter in question to give security for costs on the ground of his poverty or that other persons have induced him to apply for the writ.—*R. v. MALMESBURY CORPN.* (1841), 9 Dowl. 359; Woll. 127; 10 L. J. Q. B. 129; 5 J. P. 227; 5 Jur. 366.

1821. — — — — — **—R. v. HUGHES, ETC., JJ., Ex p. HULME** (1905), 69 J. P. Jo. 28, D. C.

1822. Amount may be increased.]—A corpn. or other similar body, nominally prosecutors, may compel the virtual prosecutors to give security for costs. But if the security originally ordered be insufficient, the corpn. must apply to the ct. promptly, in order to have the amount increased, & they must not wait until the parties have gone on, & the case is ripe for hearing.—*R. v. SOUTHAMPTON TOWN & HARBOUR IMPROVING COMRS.* (1869), 20 L. T. 585.

Part VII.—Quo Warranto.

SECT. 1.—NATURE AND PURPOSE.

1823. Nature—Civil proceedings.]—ANON. (*temp.* 1784–1802), cited in 9 Dow. & Ry. K. B. at p. 227. *Annotations:—*Consd. *Re Gellibrand* (1823), 1 Dow. & Ry. K. B. 121. *Reid. It. v. Slythe* (1827), 9 Dow. & Ry. K. B. 226.

1824. ———.]—An information in the nature of a quo warranto will not lie for encouraging the exercise of a franchise. The old writ of quo warranto is a civil writ, at the suit of the Crown: it is not a criminal prosecution. This was the true old way of inquiring into usurpations upon the Crown. Then informations in the nature of a quo warranto came into use and supplied their place (WILMOT, J.).—R. v. MARSDEN (1765), 3 Burr. 1812; 1 Wm. Bl. 579; 97 E. R. 1113.

*Annotations:—*Reid. *R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 505. *Mentd. Mosley v. Chadwick* (1782), 7 B. & C. 47, n.; *R. v. Wallis* (1793), 5 Term Rep. 375; *R. v. McKay* (1826), 5 B. & C. 640; *G. E. Ry. v. Goldsmid* (1884), 9 App. Cas. 927; *Hammerton v. Dysart*, [1916] 1 A. C. 57.

1825. ———.]—A verdict having been obtained by deft. in a quo warranto information to show by what authority he claimed the office of alderman, a new trial was moved for on the ground that the verdict had been given against the weight of evidence:—Held: of late years a quo warranto information had been considered merely in the nature of a civil proceeding and a new trial would be ordered.—R. v. FRANCIS (1788), 2 Term Rep. 484; 100 E. R. 261.

1826. ———.]—Quo warranto information—Origin of—Writ of quo warranto.]—R. v. MARSDEN, No. 1824, *ante*.

1827. ———.]—A proceeding by information in the nature of quo warranto will lie for usurping any office whether created by charter of the Crown alone, or by the Crown with the consent of Parliament, provided the office be of a public nature & a substantive office, & not merely the function & employment of a deputy or servant held at the will & pleasure of others.

The mode of proceeding by information in the nature of a quo warranto came, no doubt, in the place of the ancient writ of quo warranto. This writ was brought for property of, or franchise derived from, the Crown (TINDAL, L.C.J.).—DARLEY v. R. (1846), 12 Cl. & Fin. 520; 8 E. R. 1513, H. L.

*Annotations:—*Consd. *R. v. St. Martin's in the Fields Grdns.* (1851), 17 Q. B. 149. *Appld. Re Lowerstorf Improvements Comrs.* (1854), 18 J. P. Jo. 772. *Expld. Re Barlow* (1861), 30 L. J. Q. B. 271. *Consd. Ex p. Smith* (1863), 2 New Rep. 321; *R. v. Hampton* (1865), 6 B. & S. 923; *Bradley v. Sylvester* (1871), 25 L. T. 459; *It. v. Burrows*, [1892] 1 Q. B. 399; *It. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595. *Reid. It. v. Mousley* (1846), 8 Q. B. 946; *R. v. Cox* (1858), 6 W. L. 282; *It. v. Fox* (1858), 8 E. & B. 939; *R. v. Smyth* (1858), 23 J. P. Jo. 68; *R. v. South Weald Overseers* (1864), 6 B. & S. 391; *R. v. Dix* (1866), 30 J. P. Jo. 390; *Ex p. Parry* (1887), 3 T. L. R. 49; *R. v. Wells* (1895), 39 Sol. Jo. 585. *Mentd. R. v. Collins* (1876), 24 W. L. 732.

1828. ———.]—Distinguished from writ of quo warranto—Whether judgment final.]—A judgment in quo warranto, which is a writ of right, is final, but on an information in the nature of quo warranto it is neither conclusive nor final.—

PART VII. SECT. 1.

1823 I. Nature—Civil proceedings.]—An information in the nature of a quo warranto is a civil, not a criminal, proceeding.—R. v. NAGLE (1894), 24 O. L. 507.—CAN.

1823 II. ———.]—R. v. QUESNEL (1909), 11 W. L. R. 96; 19 Man. L. R. 23.—CAN.

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R. v. TRINITY HOUSE (1662), 1 Sid. 86; 1 Keb. 331; 82 E. R. 986.

*Annotations:—*Reid. *Anon.* (1698), 12 Mod. Rep. 224. *Mentd. Woodward v Fox* (1691), 2 Vent. 187.

1829. ———.]—Effect of verdict upon rights of Crown.]—The King is concluded by a verdict upon the mere right in a quo warranto, but not in an information.—R. v. CARPENTER (1679), 2 Show. 47; 89 E. R. 784.

*Annotations:—*Mentd. *Bennett v. Neale* (1811), Wight. 324; *Meade v. Norbury* (1816), 2 Price, 335.

1830. ———.]—Form of judgment—Exercise of franchise.]—(1) In a quo warranto the judgment is to seize the franchise in manibus regis; in an information, to oust deft. of the particular franchise.

(2) Information shall not be filed in the Crown Office before the informer gives security to answer the costs if deft. is acquitted.—R. v. HERTFORD CORPN. (1699), 1 Salk. 374; Carth. 503; 1 Ld. Raym. 426; 91 E. R. 325.

*Annotations:—*As to (2) *Reid. R. v. Ponsonby* (1753), 1 Keny. 1. *Generally, Mentd. R. v. Morgan* (1736), 2 Stra. 1042; *R. v. Marsden* (1765), 3 Burr. 1812; *R. v. Breton* (1768), 4 Burr. 2260; *Darley v. R.* (1846), 12 Cl. & Fin. 520; *It. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595.

1831. ———.]—On motion for an information in nature of quo warranto to try the validity of an election to the office of churchwarden:—Held: this was not an usurpation on the rights or prerogatives of the Crown for which only the old writ of quo warranto lay, & the rule would be refused.—R. v. SHEPHERD (1791), 4 Term Rep. 381; 100 E. R. 1075.

*Annotations:—*Consd. *R. v. Birmingham* (1837), 7 Ad. & El. 254. *Reid. Darley v. R.* (1846), 12 Cl. & Fin. 520; *Ex p. Mawby* (1851), 18 Jur. 906.

1832. Purpose—To enquire into usurpations—Upon rights of the Crown—Exercise of franchise.]—R. v. MARSDEN, No. 1824, *ante*.

1833. ———.]—R. v. SHEPHERD, No. 1831, *ante*.

1834. ———.]—DARLEY v. R., No. 1827, *ante*.

1835. ———.]—To test authority—Of persons exercising jurisdiction—Justices of oyer & terminer.]—Motion was made for an information against defts. for abuse in the exercise of a jurisdiction which they took upon themselves as justices of oyer & terminer without any colour of authority:—Held: if they had not such an authority, the proper remedy was a quo warranto; & if they had, it was an authority of that high nature as this ct. would not grant an information for the abuse of.—R. v. SCARBOROUGH (BAILIFF) (1728), 1 Barn. K. B. 113; 94 E. R. 78.

1836. ———.]—Or public trust—Paving commissioners.]—Where an information in nature of quo warranto was moved for against defts., for exercising the office of comrs. for paving the town of T. under a local Act, who had been improperly elected to fill up vacancies which had happened in the number of comrs. originally named in the Act & it was shown they were not a corporate body, & no franchise of the Crown was invaded:—Held: the information would be granted, informations

office.—R. v. STREET (1905), 6 Terr. L. R. 137.—CAN.

a. Purpose—To determine validity of appointment—Of assessor.]—Re Mc-PHERSON & BEEMAN (1859), 17 U. C. R. 99.—CAN.

b. ———.]—To test validity of elections.]—R. v. BRADY (1858), 7 I. C. L. R. 610; 3 Ir. Jur. 223.—IR.

Sect. 1.—Nature and purpose. Sects. 2 & 3: Subsect. 1, A. (a) & (b).]

having been constantly granted where any new jurisdiction or a public trust was exercised without authority.—*R. v. BADCOCK* (1782), cited in 6 East, at p. 359; 102 E. R. 1324.

Annotation:—*Refd. R. v. Bedford Level Corpn.* (1805), 6 East, 358.

1837. — To repeal grant of franchise—By Crown—On neglect of duty.]—In the case of an abuse of a franchise by negligence, the Crown may repeal the grant by *sci. fa.* or *quo warranto*.—*PETER v. KENDAL* (1827), 6 B. & C. 703; 5 L. J. O. S. K. B. 282; 108 E. R. 610.

Annotations:—*Refd. Hammerton v. Dysart*, [1916] 1 A. C. 57. *Mentd. Re Cooling & G. N. Ry.* (1849), 6 Ry. & Can. Cas. 248; *R. v. North & South Shields Ferry Co.* (1852), 22 L. J. M. C. 9; *Matthews v. Peache* (1855), 20 J. P. 244; *Royal v. Yaxley* (1872), 20 W. R. 903; *A.-G. v. Simpson*, [1901] 2 Ch. 671.

— To inquire into exercise of franchise.]—
See No. 1824, ante.

— Whether to test qualification of electors.]—
See Nos. 1911–1915, post.

See, now, Judicature Act, 1884 (c. 61), s. 15.

SECT. 2.—JURISDICTION OF COURT.

1838. Leave of court necessary—9 Ann., c. 20.]—The ct. will grant an information *quo warranto*, if there appear to be a question necessary to be tried.

An information in nature of a *quo warranto* may be brought, with leave of the ct., at the relation of any person desiring to prosecute; & this is by virtue of 9 Ann., c. 20, the end of which statute was to prevent frivolous & vexatious controversies, & therefore informations are not to be filed without leave of the ct. (*per CUR.*).—*R. v. BUTLER* (1725), 8 Mod. Rep. 350; 88 E. R. 250.

1839. —.]—Deft. was called upon by a rule to show cause why an information in nature of a *quo warranto* should not be filed against him for exercising the office of bailiff of S.

When Lord Mansfield first came into this ct. he found that informations in the nature of *quo warranto* were had almost for asking, but he soon saw the vexation of such a rule, & unless he found strong grounds for questioning deft.'s title, he always refused to let the information go. Such is the conduct I am inclined to pursue, & therefore I shall consider all the circumstances of this case (*LORD KENYON, C.J.*).—*R. v. SARGENT* (1793), 5 Term Rep. 466; 101 E. R. 262.

Annotations:—*Refd. R. v. Richmond* (1796), 6 Term Rep. 560. *Mentd. Whithorn v. Thomas* (1844), 14 L. J. C. P. 38; *R. v. Stapleton* (1853), 22 L. J. M. C. 102.

1840. Discretion of court—Court bound to consider all circumstances.]—*R. v. STACEY*, No. 1957, *post*.

1841. — Wrongful exercise of power.]—Motion for information in the nature of a *quo warranto* against defts. for acting as freemen of the city of G., not residing there at the time of their election:—*Held*: the rule would be refused, as the complaint was only of the imprudent exercise of a privilege & not of the illegality of it.—*ANON.* (1728), 1 Barn. K. B. 137; 94 E. R. 96.

1842. — No civil right in controversy.]—Where a corporation was dissolved & no

corporate body existed in fact at the time, the ct. refused to grant an information in nature of *quo warranto* against an individual for an impertinent claim to be returning officer at an election of members to serve in Parliament by virtue of his having been elected an alderman while the corporation existed in fact, there being no civil right in controversy, but it being rather the ground of a proceeding in *pocnam* by the A.-G.—*R. v. SAUNDERS* (1802), 3 East, 119; 102 E. R. 542.
Annotation:—*Refd. R. v. Staples* (1867), 9 B. & S. 928, n.

1843. — Inferior office.]—On a motion for an information in the nature of a *quo warranto* against one W. for taking upon him the office of petty constable:—*Held*: the information would be refused.

The King has a right to call any one to account by his writ of *quo warranto*, for exercising any public office, be it ever so small, yet we do not use to grant informations in the nature of them for such inferior offices (*per CUR.*).—*ANON.* (1729), 1 Barn. K. B. 279; 94 E. R. 190.

Annotation:—*Consd. Darley v. R.* (1846), 12 Cl. & Fin. 520.

1844. — Where no other remedy.]—Information in the nature of *quo warranto* is a remedy given by law at the discretion of the ct. to try the right in these cases between the parties, & there is no other remedy. The evidence, therefore, upon which informations are denied ought to be very clear & strong; for by refusal we conclude the right of the corpn. (*YORKE, C.J.*).—*R. v. GROSVENOR* (1733), Kel. W. 280; 25 E. R. 614.

1845. — Consequences of application considered—Motive of relator.]—On motions for cross-informations in the nature of writs of *quo warranto* for the office of Burgess of W.:—*Held*: the rule would be discharged upon three grounds, taken jointly & not separately: (1) the behaviour & long acquiescence of the informers knowing the disqualification; (2) the motives of the informers for now moving it; (3) the probable consequences to the borough of granting the information, as many derivative rights depended on the election of D., & perhaps the existence of the borough.—*R. v. DAWES* (1767), 4 Burr. 2022, 2120; 1 Wm. Bl. 634; 98 E. R. 54, 106.

Annotations:—*Consd. R. v. Parry* (1837), 6 Ad. & El. 810. *Refd. R. v. Stacey* (1785), 1 Term Rep. 1; *R. v. Archdall* (1838), 2 J. P. 486.

1846. — —.]—It is in the discretion of the ct. to grant a *quo warranto* information or not; & under circumstances tending to throw suspicion on the motives of the relator, the ct. will not grant such application where the consequence will be to dissolve a corpn.—*R. v. TREVENEN* (1819), 2 B. & Ald. 479; 106 E. R. 441.

Annotations:—*Distd. R. v. Wakelin* (1830), 1 B. & Ad. 50. *Consd. R. v. Parry* (1837), 6 Ad. & El. 810. *Refd. R. v. Slythe* (1827), 6 B. & C. 240; *R. v. Benney* (1831), 1 B. & Ad. 684; *Darley v. R.* (1846), 12 Cl. & Fin. 520.

1847. — —.]—On motion for a *quo warranto* information against a town councillor, founded on a defect in the Burgess roll, it is not a valid objection to the relator that he is not a Burgess. His interest is sufficient if he be subject to the government of the councillors as an inhabitant.

If the motion be made on the affidavits of three persons, two of whom are not qualified to be relators, the information may nevertheless be granted if the third party be unobjectionable as a

—CAN.

*D. To determine validity of poll upon hospital scheme—Jurisdiction of District court judge—Union Hospital Act, 1920.]—**R. v. ASSINIBOINE VALLEY UNION HOSPITAL*, [1921] 3 W. W. R. 502.—CAN.

PART VII. SECT. 2.
1841 i. Discretion of court—Wrongful exercise of power.]—*Ex p. TORRENS* (1870), 2 Han. 196.—CAN.

c. — Status, motives or conduct of relator involved.]—Leave to exhibit an information in the nature of a *quo*

warranto is not necessarily granted merely because of a reasonable doubt as to the validity of deft.'s title to the office. Where the question of relator's status, motives or conduct is raised the granting of leave is discretionary.—*Re HANNON* (1920), 2 W. W. R. 463.

relator, though his affidavit alone does not show sufficient ground for the information.

Leave to file a *quo warranto* information against an individual corporator, at the instance of a private person, will not be refused merely because the proceeding may or will have the effect of dissolving the corps.

It is discretionary in the ct. to grant or withhold a *quo warranto* information, even where a good objection to the title is shown.

In a case where assessors were objected to, as having been assessors of the borough & not for the mayor's ward, & no satisfactory answer was given, the ct. refused a rule for an information, on the grounds that no fraud was imputed, that no mischief appeared to have been done, that the prosecution, if successful, would probably dissolve the corps., & that the prosecutors appeared to have that intention.

A burgess who has taken part in the election of councillors for a borough, is not a competent relator for a *quo warranto*, the object of which is to show that no valid election could possibly have been held as there was no good burgess list in existence.—*R. v. PARRY* (1837), 6 Ad. & El. 810; 2 Nev. & P. K. B. 414; Will. Woll. & Dav. 703; 1 J. P. 247; 112 E. R. 311.

Annotations:—*Consd. R. v. Ward* (1873), L. R. 8 Q. B. 210. *Refd. R. v. Backhouse* (1865), 12 L. T. 579. *Mentd. R. v. Canterbury Archbp.* (1848), 11 Q. B. 483; *Julius v. Oxford Bp.* (1880), 5 App. Cas. 214.

1848. — Right dependent on doubtful law.]—Information in the nature of a *quo warranto* granted, where the right depends upon a matter of doubtful law, in order to its being finally determined.—*R. v. CARTER* (1774), 1 Cowp. 58; 98 E. R. 966.

1849. — New or doubtful question involved.]—The ct. will not decide the validity of the election of a corporate officer, if the question is new or doubtful, on a rule to show cause for an information in the nature of *quo warranto*.—*R. v. GODWIN* (1780), 1 Doug. K. B. 397; 99 E. R. 255.

Annotation:—*Mentd. R. v. London Corpn.* (1786), 1 T. rrm Rep. 423.

1850. — Friendly proceedings—To enable party to disclaim.]—It is no objection to *quo warranto* that it is a friendly proceeding in order that the party might disclaim.—*R. v. MARSHALL* (1817), 2 Chit. 370.

1851. — Substantial grievance must exist.]—Before the ct. will grant a *quo warranto* information, it requires to be satisfied that there is a substantial grievance. Merely showing that the mode of election is one likely to cause a grievance & an injustice is not sufficient.—*R. v. COUSINS* (1873), L. R. 8 Q. B. 216; 42 L. J. Q. B. 124; 28 L. T. 116; 37 J. P. 470.

Annotation:—*Refd. R. v. Ward* (1873), L. R. 8 Q. B. 210.

1852. — No permanent result likely.]—A clerk to a local board of health who held his office under Public Health Acts. "at the pleasure of board," could not obtain an information in the nature of *quo warranto* because of his dismissal by the resolution of a meeting consisting of fewer members than were present when he was appointed.

Where application is made for an information in the nature of a writ of *quo warranto* by a person who is liable to immediate dismissal from the office in which he seeks to be reinstated, the ct. will not, in the exercise of its discretion, grant the application.—*Ex p. RICHARDS* (1878), 3 Q. B. D. 368; 47 L. J. Q. B. 498; 38 L. T. 684; 26 W. R. 695; 42 J. P. Jo. 356.

Annotation:—*Mentd. Wood v. East Ham U. D. C.* (1907), 71 J. P. 129.

SECT. 3.—WHEN QUO WARRANTO WILL AND WILL NOT LIE.

SUB-SECT. 1.—OFFICES.

A. Conditions Precedent.

(a) Offices created by Charter or Statute.

1853. General rule.]—*DARLEY v. R.*, No. 1827, *ante*.

1854. —.]—The office of clerk to a board of guardians, created by order of the poor law comrs. under Poor Law Amendment Act, 1834 (c. 76), is an office, for the usurpation of which an information in the nature of a *quo warranto* may be maintained.

It appears that an election has taken place & that the office is full. Now that being so it is settled by a long course of practice that the proceedings ought to be by information in the nature of *quo warranto* & not by *mandamus*. If an office be created by Act of Parliament, & of a public nature, an information in the nature of a *quo warranto* will lie for the usurpation of it, although no usurpation upon the Crown is directly involved (*LORD CAMPBELL, C.J.*).

I have taken it to be quite clear that where an office is created mediately or immediately by Act of Parliament, & is of a public nature, the remedy is by *quo warranto*. It is not necessary that the office should be strictly a public office, if the duties are of a public nature, & here the duties are such as materially affect a large body of persons (*PATTESON, J.*).—*R. v. ST. MARTIN'S GUARDIANS* (1851), 17 Q. B. 149; 20 L. J. Q. B. 423; 15 Jur. 800; 117 E. R. 1238; *sub nom. Re ST. MARTIN'S-IN-THE-FIELDS GUARDIANS*, 17 L. T. O. S. 140; 15 J. P. 371; *subsequent proceedings, sub nom. R. v. GRIFFITHS*, 17 Q. B. 164.

Annotations:—*Consd. R. v. Fox* (1858), 8 E. & B. 939; *R. v. Burrows*, [1892] 1 Q. B. 399. *Refd. Re Barlow* (1861), 30 L. J. Q. B. 271; *R. v. Hertford College* (1878), 3 Q. B. D. 693; *R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595.

1855. —.]—Proceedings in the nature of a *quo warranto* will only lie for the usurpation of an office held under the Crown.—*Ex p. PARRY* (1887), 3 T. L. R. 649, D. C.

Annotations:—*Refd. R. v. Burrows*, [1892] 1 Q. B. 399; *R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595.

1856. Office created by local Act.]—A *quo warranto* information does not lie for the office of trustees under a public local Act.—*R. v. HANLEY* (1831), 3 Ad. & El. 463, n.; 111 E. R. 489.

Annotations:—*Consd. R. v. Ramsden* (1835), 3 Ad. & El. 456. *Refd. Darley v. R.* (1846), 12 Cl. & Fin. 520.

1857. —.]—A *quo warranto* will not lie to try the title of a comr. appointed under an inclosure & drainage Act.—*R. v. ADAMS* (1838), 2 J. P. 741.

As to Particular Offices, see Sub-sect. 1, G., *post*.

(b) Public Offices.

1858. General rule.]—A private person shall not be permitted to file a *quo warranto* information in respect of any thing of a private nature.—*LOWTHER'S CASE* (1725), 2 Ld. Raym. 1409; 92 E. R. 417; *sub nom. R. v. LOWTHER*, 1 Stra. 637.

Annotation:—*Refd. R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595.

1859. —.]—*DARLEY v. R.*, No. 1827, *ante*.

1860. —.]—*R. v. ST. MARTIN'S GUARDIANS*, No. 1854, *ante*.

1861. — Charitable trusts.]—*R. v. GREGORY* (1772), 4 Term Rep. 240, n.; 100 E. R. 995.

Annotations:—*Refd. Darley v. R.* (1846), 12 Cl. & Fin. 520; *R. v. Hertford College* (1877), 3 Q. B. D. 590. *Mentd. R. v. St. Catherine's Hall, Cambridge* (1791), 4 Term Rep. 233.

1862. — —.]—In 1556 certain lands were demised by P. to trustees, for the purpose of providing a weekly allowance & almshouses for six

Sect. 3.—When quo warranto will and will not lie:
Sub-sect. 1, A. (b), (c), (d), (e) & (f).]

poor men in the parish of E., & also for finding a schoolmaster, who was to preach twice a year in the parish church of E. By charter of James I. the hospital & school were incorporated by the name of "the master, schoolmaster, etc., of P." & the charity & appointment of master was subsequently regulated by private Act of Parliament:—*Held*: an information in the nature of a *quo warranto* would not lie in respect of the office of master.—*R. v. MOUSLEY* (1846), 8 Q. B. 946; 16 L. J. Q. B. 89; 7 L. T. O. S. 158; 10 J. P. 340; 11 Jur. 56; 115 E. R. 1130.

1863. ———.]—A proceeding by information in the nature of a *quo warranto* will only lie for usurping an office of a public or quasi public nature, & will therefore not lie for usurping the office of governor or committee-man of a society formed for eleemosynary purposes, such as the Licensed Victuallers' Society, although it be incorporated by Royal charter.—*Ex p. SMITH* (1863), 2 New Rep. 321; 8 L. T. 458; *sub nom. Ex p. SMYTH*, 27 J. P. 503; 11 W. R. 754.

As to Particular Offices, see Sub-sect. 1, G., *post*.

(c) *Permanent and Independent Offices.*

1864. General rule.]—*DARLEY v. R.*, No. 1827, *ante*.

1865. ———.]—*Quo warranto* lies for the office of guardian of the poor elected under Poor Law Amendment Act, 1834 (c. 76), s. 38.—*R. v. HAMPTON* (1865), 6 B. & S. 923; 13 L. T. 431; 30 J. P. 244; 12 Jur. N. S. 583; 15 W. R. 43; 122 E. R. 1434.

Annotations:—*Reid. R. v. Dix* (1866), 30 J. P. Jo. 390; *R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595.

1866. Not office held at pleasure.]—An information in the nature of a *quo warranto* will not be granted in the case of a clerk to borough justices appointed under Poor Law Amendment Act, 1834 (c. 76), s. 102, as such a clerk is removable at the pleasure of the justices.—*R. v. FOX* (1858), 8 E. & B. 939; 30 L. T. O. S. 285; 4 Jur. N. S. 410; 120 E. R. 350; *sub nom. Re Fox*, 27 L. J. Q. B. 151; 22 J. P. 656.

Annotations:—*Ex p. R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595. *Reid. R. v. Hampton* (1865), 6 B. & S. 923; *Bradley v. Sylvester* (1871), 25 L. T. 459; *Ex p. Parry* (1887), 3 T. L. R. 649.

1867. ———.]—*Re CASTLEFORD SCHOOL BOARD* (1871), 35 J. P. Jo. 726.

1868. ———.]—Upon an application for a writ of *quo warranto* against the clerk to a school board, on the ground that he was improperly elected according to the provisions of Elementary Education Act, 1870 (c. 75), s. 35:—*Held*: a rule would be refused as the majority of the board might, without assistance, remedy the impropriety themselves, the office being held during the pleasure of

the board.—*BRADLEY v. SYLVESTER* (1871), 25 L. T. 459; *sub nom. Ex p. BRADLEY*, 86 J. P. 6.

Annotation:—*Reid. R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595.

1869. ———.]—*Ex p. RICHARDS*, No. 1852, *ante*.

1870. ———.]—A bye-law of a local board said that no resolution should be altered or rescinded except by a meeting of as many members of the board as made the resolution. One resolution of nine members appointed R. to be clerk, & he acted for 20 years, when one day a meeting of eight members dismissed him, & appointed J. in his stead:—*Held*: a *quo warranto* was not competent in case of an officer appointed at pleasure.—*R. v. JONES* (1878), 42 J. P. 614, D. C.

As to Particular Offices, see Sub-sect. 1, G., *post*.

(d) *Office must be Full.*

1871. General rule.]—At the first election of councillors for a ward, under Municipal Corpsns. Act, 1835 (c. 76), A. & B. were elected by the smallest numbers. At the election of aldermen immediately following, two of the councillors elected by higher numbers were chosen aldermen. C. & D. were chosen councillors in their places, each by fewer votes than had been given for A. or B. At the time for electing councillors in the following year, A. & B. remained in office, & C. was elected councillor in another ward, & was admitted to the office. The candidate for that office who had had the next largest number of votes disputed the election, on the grounds that C. was still a councillor of the first ward, inasmuch as he had been chosen to fill an extraordinary vacancy, that this fact was notorious to the burgesses, & consequently, that the votes given for C. in the second ward were thrown away. A *mandamus* was therefore moved for to swear in the opposing candidate:—*Held*: assuming the objections to be well founded a *mandamus* could not go, the office being full, & being one for which a *quo warranto* might be brought.—*R. v. DERRY (COUNCILLORS)* (1837), 7 Ad. & El. 419; 2 Nev. & P. K. B. 589; Will. Woll. & Dav. 671; 1 J. P. 356; 112 E. R. 528.

Annotation:—*Reid. R. v. Chester Corpns.* (1855), 2 Jur. N. S. 114.

1872. ———.]—The persons declared to be elected as town councillors by the mayor or ward alderman, at a municipal election, & who had accepted office & made the proper declaration, can only be removed from office by a *quo warranto* information, & therefore a *mandamus* does not lie to admit other candidates who had the majority of votes.

When, on a disputed municipal election, two of the candidates obtain a rule *nisi* for a *mandamus* to admit, & afterwards a rule *nisi* for a *quo warranto* against the parties admitted, the rule for the *mandamus* will not be, as a matter of course,

PART VII. SECT. 3, SUB-SECT. 1.—
 A. (c).

1864 i. General rule.]—An office to which this writ is applicable should be an office of some importance & of substantial tenure.—*R. v. WHELAN* (1887), 20 L. R. Ir. 461.—*IR.*

1866 i. Not office held at pleasure.]—A *quo warranto* will not be granted to inquire into the right to an office which is held merely at pleasure.—*R. v. CARROLL* (1888), 22 L. R. Ir. 400.—*IR.*

1866 ii. ———.]—*R. v. HEDDERMAN & LIMERICK JJ.* (1896), 30 I. L. T. 74.—*IR.*

1866 iii. ———.]—*R. v. BAYLY*, [1898] 2 I. R. 335.—*IR.*

1866 iv. ———.]—*R. v. STRABANE*

URBAN DISTRICT COUNCIL (1900), 35 I. L. T. 12.—*IR.*

1866 v. ———.]—*R. (JACOB) v. BLANEY*, [1901] 2 I. R. 93.—*IR.*

PART VII. SECT. 3, SUB-SECT. 1.—
 A. (d).

1871 i. General rule.]—A. having given up the premises in respect of which he was qualified as councillor, & believing himself thereby disqualified, gave notice to the town clerk that he had resigned; & a notice was, thereupon, posted announcing the vacancy, & that an election would be held to fill the office. At this election, B. was elected. The ct., granted a *quo warranto*, calling upon B. to show by what authority he exercised the office.

—*R. v. FINNEGAN* (1859), 10 I. C. L. R. 299; 4 Ir. Jur. 214.—*IR.*

1871 ii. ———.]—The term of office of a local pension committee having expired, a resolution was passed by the County Council appointing a new committee including M. The summons convening the meeting had not, as required by Local Government (Appln. of Enactments) Order, 1898, specified the appointment of such committee as business to be transacted at the meeting. On application for a *quo warranto* against M.:—*Held*: the committee not having been validly appointed, there was no existing office, & *quo warranto* did not lie.—*R. (FITZGERALD) v. McDONALD*, [1913] 2 I. R. 55.—*IR.*

discharged.—*R. v. WINCHESTER CORPN.* (1837), 7 Ad. & El. 215; 2 Nev. & P. K. B. 274; Will. Woll. & Dav. 525; 6 L. J. K. B. 213; 1 J. P. 278; 1 Jur. 738; 112 E. R. 452.

Annotations:—*Reid. R. v. Birmingham* (1837), 1 J. P. 211; *R. v. Caudwell* (1848), 12 J. P. Jo. 134; *R. v. Bangor Corp.* (1886), 18 Q. B. D. 349.

1873. —[—]—Where a town councillor has been struck off the Burgess roll for non-payment of poor rates, but continues to exercise the duties of the office, the ct. will not grant a *mandamus* to the mayor or alderman to proceed to a new election, but will leave the parties to their remedy by writ of *quo warranto*.—*R. v. RICKETTS* (1838), 3 Nev. & P. K. B. 151; 7 L. J. Q. B. 71; 2 Jur. 466.

1874. —[—]—Rule *nisi* calling on G., clerk of the County Ct. for the A. district, under County Cts. Act, 1846 (c. 95), to show cause why a *quo warranto* should not issue in respect of the office of clerk of the county ct. The present applicant had been clerk of the A. Ct. under 25 Geo. 2, c. 38. The ground of the application was that the office was full at the time of G.'s appointment as it was the same ct. as had been in existence before. It was now contended that it was in truth a new ct., & the appointment within the power of the judge, & that a *quo warranto* would not lie, the office not being an office of profit under the Crown.

We purposely abstain from giving any opinion, but the questions ought to be raised upon the record. The rule therefore will be made absolute (*per cur.*).—*R. v. GIBSON* (1847), 10 L. T. O. S. 102; 11 J. P. Jo. 854.

1875. —[—]—*R. v. ST. MARTIN'S GUARDIANS*, No. 1854, *ante*.

1876. —[—]—It is an inflexible rule of law that where a person has been *de facto* elected to a corporate office, & has accepted & acted in the office, the validity of the election & the title to the office can only be tried by proceeding on a *quo warranto* information.—*FROST v. CHESTER CORPN.* (1855), 5 E. & B. 531; 119 E. R. 578; *sub nom.* *R. v. CHESTER CORPN.*, 25 L. J. Q. B. 61; 26 L. T. O. S. 71; 20 J. P. 197; 2 Jur. N. S. 114; 4 W. R. 14.

Annotations:—*Consd. R. v. Welchpool Corp.* (1876), 35 L. T. 594; *R. v. Beer*, [1903] 2 K. B. 693.

1877. —[—]—On cause being shown against a rule for a *mandamus* to elect twenty-four vestrymen pursuant to Metropolis Local Management Act, 1855 (c. 120), it appeared that at the election which had taken place, eight persons, who had claimed to vote & who had also been proposed as vestrymen, were rejected as disqualified, because they had not paid a church-rate, which they alleged to be invalid. It was objected that as the vestrymen *de facto* had acted, the office was full & *mandamus* was not the proper remedy.

Held: it was doubtful whether the office was not full, & the better course would be to enlarge this rule & to proceed by *quo warranto* in the first instance.—*R. v. ST. CLEMENT DANES (CHURCH-WARDS)* (1855), 26 L. T. O. S. 105.

1878. —[—]—W., a member of a board of guardians agreed with the board to collect on their behalf rent receivable by the board in respect of a

certain house. There was no express agreement as to any fee or commission to be paid to the member for so doing. He collected the rent until the house was sold, & then paid to the board the amount of the rent received by him, less a sum which he claimed to be entitled to retain as commission, but he subsequently paid to the board the sum which he had retained. After receiving it the board declared the member's office of guardian to be vacant, on the ground that, by reason of charging commission for the collection of the rent, he had become disqualified under Local Government Act, 1894 (c. 73), s. 46 (1) (e), for being a member of the board:—*Held*: the fact that before the declaration of vacancy the employment had terminated & the amount of the commission had been paid by the member to the board did not prevent him from being disqualified, & the office was, therefore, vacant.

An order *nisi* was directed to R. to show cause why an information in the nature of *quo warranto* should not be exhibited against him to show by what authority he claimed to exercise the office of a guardian of the poor of the parish of B. upon the ground that the office was full at the date of the election:—*Held*: the right procedure had been followed.—*R. v. ROWLANDS*, [1906] 2 K. B. 292; 75 L. J. K. B. 501; 95 L. T. 502; 70 J. P. 463.

As to Particular Offices, *see* Sub-sect. 1, G., *post*.

(e) Title.

1879. Title must be complete.—Election & swearing in.—Upon a *quo warranto*, there must appear a complete title for deff. by a good swearing in, as well as an election.—*R. v. CASTLE* (1737), Andr. 119, 241; 95 E. R. 325, 380; *sub nom.* *CASTEL v. CARTER*, 2 Stra. 1097.

1880. —[—]—There must be an user as well as a claim of a franchise in order to found an application for an information in the nature of a *quo warranto*. Stating that deff., who was elected to an office, had tendered himself to be sworn in is not sufficient.—*R. v. WHITWELL* (1792), 5 Term Rep. 85; 101 E. R. 48.

Annotations:—*Consd. R. v. Slatter* (1840), 9 L. J. Q. B. 115. *Reid. R. v. Tate* (1803), 4 East, 337; *R. v. Pepper* (1838), 7 Ad. & El. 745; *Re Armstrong* (1856), 25 L. J. Q. B. 238.

1881. —[—]—*R. v. HARRISON* (1839), 11 Ad. & El. 506, n.; 113 E. R. 507, n.

Annotation:—*Reid. R. v. Slatter* (1840), 9 L. J. Q. B. 115.

As to Particular Offices, *see* Sub-sect. 1, G., *post*.

(f) Possession and User.

1882. Possession.—Must be *de facto*.—Acceptance of office insufficient.—Under Municipal Corpn. Act, 1835 (c. 76), the ct. will not grant a *quo warranto* information unless it be shown that the party is in office *de facto*, & for this purpose it is not enough if the affidavit states simply that he has "accepted the office," without specifying the mode of acceptance. The acts constituting acceptance should also be stated.—*R. v. SLATTER* (1840), 11 Ad. & El. 505; 3 Per. & Dav. 263; 9 L. J. Q. B. 115; 4 J. P. 73; 4 Jur. 316; 113 E. R. 507.

Annotation:—*Distd. R. v. Quayle* (1840), 11 Ad. & El. 508.

(1912), 11 E. L. R. 33; 45 N. S. R. 501. —CAN.

PART VII. SECT. 3, SUB-SECT. 1.—A. (f).

1882 i. Possession.—Must be *de facto*.—Where a person elected a city councillor has entered upon & is exercising the office, a *quo warranto* is the proper mode of trying his right to do it.—*Ex p. CAMERON* (1868), 1 Han. 306.—CAN.

PART VII. SECT. 3, SUB-SECT. 1.—A. (e).

1879 i. Title must be complete.—It is sufficient on an application for a *quo warranto* against a person for exercising a municipal office to show that he has been appointed to the office by a proper authority, & has signed his acceptance of it, without showing that he has performed any of the duties, or has taken the oath of office.—*Ex p. GALLAGHER* (1886), 26 N. B. R.

73.—CAN.

1879 ii. —[—]—Where leave was sought for a *quo warranto*, against a stipendiary magistrate for not taking the oath of allegiance before assuming office & it subsequently appeared that he had taken it a week later than the proceeding mentioned:—*Held*: as deff. was legally acting in his office at the time of the motion for a *quo warranto*, leave to exhibit the information ought to be refused.—*R. v. MCKAY*

Sect. 3.—When quo warranto will and will not lie: Sub-sect. 1, A. (f), B., C. & D.]

1883. User—Essential.]—R. v. WHITWELL, No. 1880, *ante*.

1884. ———.]—Quo warranto moved for upon affidavit, that deft. had exercised the office of mayor. Cause shown upon affidavit of deft. that he had not acted as mayor. The election took place in C. upon Nov. 9, & the rule was moved for on Nov. 12. The ct. refused the writ, the time within which deft. was alleged to have acted as mayor being so short as to make it proper that the relator should specify distinctly in what respect deft. acted as mayor.—*R. v. MORGAN* (1837), 1 J. P. 156; 1 Jur. 355.

1885. ———.]—A quo warranto will not be granted against a burgess for being illegally upon the burgess roll, if it does not appear that he has in some way exercised his office.

A party was inserted by the overseers in the burgess list, & duly objected to by another burgess, but at the time of the revision, the mayor & assessors improperly, as it was alleged, retained his name. It did not appear that he had since in any way used or exercised his office of burgess:—*Held*: a quo warranto would not lie against him.—*Re ARMSTRONG* (1856), 25 L. J. Q. B. 238; *sub nom. R. v. ARMSTRONG*, 26 L. T. O. S. 248; 20 J. P. 86; 2 Jur. N. S. 211.

1886. ———.]—As well as acceptance.]—The remedy by quo warranto does not apply to a non-corporate office unless there is both acceptance & user.

Deft., while churchwarden, was proposed & elected as vestry clerk. He wrote a letter of thanks to the electors, but did not act as vestry clerk:—*Held*: what he had done was not such an exercise of the office of vestry clerk as to render the remedy by quo warranto applicable.—*R. v. TIDY*, [1892] 2 Q. B. 179; 61 L. J. Q. B. 791; 67 L. T. 319; 56 J. P. 650; 41 W. R. 128; 8 T. L. R. 646, D. C.

1887. ———.]—What is sufficient user—Defective swearing in.]—A swearing in, though defective in law, yet being such whereby the party claimed at the time to be a free burgess of a corp., is a sufficient user of the office to warrant an information in nature of quo warranto against him, & not like a mere claim of the office.—*R. v. TATE* (1803), 4 East, 337; 102 E. R. 860.

Annotation:—*Consd. R. v. Jones* (1873), 28 L. T. 270.

1888. ———.]—Swearing in only.]—Qu.: where, after a rule to show cause why an information in the nature of a quo warranto should not be filed against several persons for usurping certain corporate offices, those persons admit their election to have been invalid, but state, that, by virtue of such election, they were only sworn in, & did not exercise the office, nor in any manner interfere in the affairs of the corp., thereby showing that they have conveyed no derivative title, whether the ct. will make the rule absolute.—*R. v. HEADLEY* (1827), 7 B. & C. 496; 1 Man. & Ry. K. B. 345; 6 L. J. O. S. K. B. 53; 108 E. R. 808.

1889. ———.]—It appeared, upon a rule for a quo warranto, that deft. had presided at a vestry meeting convened for the purpose of electing

a member of a burial board, under Burial Act, 1852 (c. 85), s. 12, that he & others were proposed & seconded, that he declared himself elected, that the clerk wrote to the clerk of the burial board informing him of deft.'s election, & that at the next vestry meeting, when deft. again presided, the minutes of the previous meeting, one of which was a memorandum of deft.'s election, were unanimously confirmed. Deft. stated in an affidavit that he had declined to attend any of the meetings of the board, & he had not at any time acted or claimed the right to act as a member of the board:—*Held*: this was not a sufficient user of the office to found an application for an information in the nature of a quo warranto.—*R. v. JONES* (1873), 28 L. T. 270; 37 J. P. 453.

Annotation:—*Folld. R. v. Tidy*, [1892] 2 Q. B. 179.

1890. ———.]—Mere claim insufficient.]—An information in the nature of a quo warranto was brought against two non-acting, & seven non-resident burgesses of a corp. to whom, by charter, an estate for life was granted in their offices, removable only for misbehaviour by the provost, etc.; against the first, on the ground of being claimants, though not sworn, & the second, as having forfeited their privileges by non-user. After judgment of ouster in K. B. in Ireland, in error thereupon:—*Held*: an information on 9 Geo. 2, c. 26, could not be maintained for a claim, but actual intrusion only, & non-residence, where a power of amotion was vested in a person designated by charter, was not an avoidance of office before that was exercised, when immediately an unlawful holding might commence, which might justify any the

A judgment of ouster cannot be given at the common law in an information in the nature of a quo warranto, unless the case of the person found or adjudged to be guilty be within the provisions of 9 Ann., c. 20, s. 5.—*R. v. PONSONBY* (1755), 1 Keny. 1; Say. 245; 1 Ves. 1; 96 E. R. 894; *affd.* (1758), 2 Bro. Parl. Cas. 311, H. L.

Annotations:—*Refd. R. v. Whitwell* (1792), 5 Term Rep. 85; *R. v. Jones* (1873), 28 L. T. 270. *Mentd. Lynn Corp'n. v. London Corp'n.* (1791), 4 Term Rep. 130.

—*A quo warranto* information will not be granted for merely claiming to be a burgess of a borough, named in Municipal Corpns. Act, 1835 (c. 76), sched. A, the party having a freedom acquired before that Act, & his name being on the freemen's roll kept under s. 5, but not on the burgess list under s. 15, etc., nor on the list of voters under Representation of the People Act, 1832 (c. 45), s. 46; at least, if it does not appear that there is any corporate property in which he could claim an interest.—*R. v. PEPPER* (1838), 7 Ad. & El. 745; 3 Nev. & P. K. B. 155; 1 Will. Woll. & H. 135; 7 L. J. Q. B. 92; 112 E. R. 650.

As to Particular Offices, see Sub-sect. 1, G., *post*.

B. Usurpation of Office.

See Sub-sect. 1, A. (a), *ante*.

C. Disqualification of Holder.

1892. Through contract of employment.]—R. v. FRANCIS, No. 1993, *post*.

1883 i. User essential.]—PENNY v. BRENT (1908), 4 E. L. R. 437.—*CAN.*

PART VII. SECT. 3, SUB-SECT. 1.—C.

1892 i. Member of local authority—Through contract with local authority.]—R. v. BRAGG, Ex p. SMITH, [1911] S. R. Q. 188.—*AUS.*

1892 ii. ———.]—A quo warranto

was obtained against the Chairman of Township Comrs., on the ground that he was disqualified, by reason of his having been a contractor with the Comrs. for profit.—*R. v. LANGTON* (1887), 20 L. R. Ir. 46.—*IR.*

1892 iii. ———.]—Where an Alderman of a city was shown to be a member of a firm occupying a market stall owned

by the city & holding a butcher's licence from the city, which could be cancelled by the city council, the ct. granted a writ of quo warranto against the alderman to show by what authority he exercised his office.—*Re FRYERS, Ex p. GALLAGHER* (1913), 41 N. B. R. 545; 14 E. L. R. 65.—*CAN.*

1893. —[—*R. v. ROWLANDS*, No. 1878, *ante*. Through bankruptcy.]—*See* BANKRUPTCY & INSOLVENCY, Vol. IV., p. 177, No. 1647.

1894. Through non-residence—Before exercise of office.]—*R. v. PONSONBY*, No. 1890, *ante*.

1895. — Disfranchisement a condition precedent.]—This ct. will not grant an information in nature of a *quo warranto* against a corporator for non-residence until he has been removed by the corpn.

I thought it was a settled principle of corpn. law, that a corporator must be disfranchised by the corpn. for non-residence before any application for an information in nature of a *quo warranto* can be granted (GROSE, J.).—*R. v. HEAVEN* (1788), 2 Term Rep. 772; 100 E. R. 416.

Annotations :—*Reid. R. v. Patteson* (1832), 2 L. J. K. B. 33. *Mentd. R. v. Portsmouth Corpn.* (1824), 3 B. & C. 152.

1896. — No user of office since disqualification—Metropolis Management Act, 1855 (c. 120).]—W. had been duly elected a vestryman under the provisions of the above Act. At that time he possessed the necessary residential qualification, but he had since ceased to occupy the qualifying premises. There was no evidence that W. had acted as a vestryman since he so ceased to occupy the premises :—*Held* : the writ of *quo warranto* would not lie against a vestryman, who had ceased to be qualified, unless he had acted as vestryman since disqualification.—*R. v. WILLIAMS*, *Ex p. VISGER* (1894), 64 L. J. M. C. 34; 43 W. R. 140, D. C.

1897. Through acceptance of incompatible office.]—A corporator accepting a new office incompatible with the old one thereby absolutely vacates the latter, & if he is ousted of his new appointment by *quo warranto* he is not remitted to his original character, nor can a vote given at a corporate meeting whilst he filled the higher office *de facto*, be referred to his original office of an inferior degree.—*R. v. HUGHES* (1826), 5 B. & C. 886; 8 Dow. & Ry. K. B. 708; 4 Dow. & Ry. M. C. 169; 5 L. J. O. S. M. C. 20; 108 E. R. 329.

Annotations :—*Reid. R. v. Patteson* (1832), 4 B. & Ad. 9. *Mentd. R. v. Hubball* (1826), 6 B. & C. 139.

1898. —[—In an information in the nature of a *quo warranto* the first count charged deft. with usurping the office of alderman of the city of N.; the second count the office of justice of the peace within the city; & the third count charged deft. with usurping the offices of justice of the peace & alderman :—*Held* : the acceptance by a person holding a corporate office of another incompatible office not corporate did not operate as an absolute avoidance of the corporate office, though it might be ground of amotion; & acceptance of an incompatible office did not operate as an absolute avoidance of a former office in any case where the party could not divest himself of that office by his own act, & without the concurrence of another authority to his resignation or amotion; unless such authority was privy & consenting to the

second appointment.—*R. v. PATTESON* (1832), 4 B. & Ad. 9; 1 Nev. & M. K. B. 612; 1 Nev. & M. M. C. 488; 2 L. J. K. B. 33; 110 E. R. 358.

Annotations :—*Mentd. Arkwright v. Cantrell* (1837), 7 Ad. & El. 565. *R. v. Chesterfield J.J.* (1840), 4 J. P. 122; *Worth v. Newton* (1854), 10 Exch. 247; *Davis v. Pembrokehire J.J.* (1881), 7 Q. B. D. 513; *R. v. Douglas* (1898), 46 W. R. 377.

1899. — Continuing incompatibility.]—Rule nisi granted for a *quo warranto*, where continuing incompatibility, though both offices held more than six years.—*R. v. LAWRENCE* (1818), 2 Chit. 371.

1900. — What constitutes acceptance.]—*R. v. TIDY*, No. 1886, *ante*.

D. Resignation from Office.

1901. Effect of resignation—Before rule obtained.]—An information for the usurpation of a franchise may be filed, although the franchise is surrendered.—*R. v. POWELL* (1755), Say. 239; 96 E. R. 866.

1902. — [—(1) The ct. will make a rule for a *quo warranto* information absolute, although deft. has resigned the office & his resignation has been accepted before the rule was obtained, where the object of the relator is not only to cause the deft. to vacate the office, but to substitute another candidate at once in the office, as in such a case the relator is entitled to have judgment of ouster or a disclaimer entered on the record.

(2) In making the rule absolute the ct. will exercise a discretion as to costs.—*R. v. BLIZARD* (1866), L. R. 2 Q. B. 55; 7 B. & S. 922; 36 L. J. Q. B. 18; 15 L. T. 242; 31 J. P. 200; 15 W. R. 105.

Annotation :—*General ly, Mentd. R. v. Tewkesbury Corpn.* (1868), L. R. 3 Q. B. 629.

1903. — After rule obtained.]—(1) The ct. will make the rule for a *quo warranto* information absolute, although the party has since the rule obtained resigned his office, & his resignation has been accepted.

(2) The ct. will not consolidate several informations against several persons for distinct offices, for there must be an information against each to enable each to disclaim.—*R. v. WARLOW* (1813), 2 M. & S. 75; 105 E. R. 310.

Annotations :—*As to* (1) *Distd. R. v. Blizard* (1866), L. R. 2 Q. B. 55. *Generally, Mentd. R. v. Headley* (1827), 1 M. & Ry. K. B. 345.

1904. — [—Where a rule for an information in the nature of a *quo warranto*, for the usurpation of an office, has been obtained & served upon deft., who thereupon resigns & does not show cause against the rule, it will be made absolute, but without costs.—*R. v. NEWCOMBE* (1866), 15 W. R. 108.

— On costs.]—*See* Sect. 6, *post*.

1905. Validity of resignation—Without deed.]—*Quo warranto* granted against one who exercised an office in a corpn. after he had resigned by

2 E. L. R. 263; 41 N. S. R. 128.—CAN.

G. Whether illiteracy a disqualification—Office of township clerk.]—*R. v. RYAN* (1850), 6 U. C. R. 296.—CAN.

PART VII. SECT. 3, SUB-SECT. 1.—D.

1901. Effect of resignation—Before rule obtained.]—*R. v. BRAGG*, *Ex p. SMITH*, [1911] S. R. Q. 188.—AUS.

1903. — After rule obtained.]—Resignation not tendered till after a conditional order for a *quo warranto* is not a bar to the order being made absolute.—*R. v. LANGTON* (1887), 20 L. R. Ir. 46.—IR.

1894. Through non-residence.]—Deft., a life tenant of a farm in A., rented it to his son & lived with his wife & family in C. until 1893, when the son having given up the farm, deft. took possession of it, occasionally visiting his wife & family in C. :—*Held* : deft. was not resident within A. so as to qualify him for the office of school trustee within A.—*R. v. EVANS* (1899), 31 O. R. 448.—CAN.

1897. Through acceptance of incompatible office.]—*R. v. ROBERTSON*, 21 C. L. T. 413.—CAN.

e. No declaration of qualification to office.]—A declaration of qualification not having been made, leave was

given to deft. to make same within ten days, otherwise leave was granted to file an information on the ground that deft. illegally exercised the franchises of the office.—*R. v. CONWAY* (1881), 46 U. C. R. 85.—CAN.

f. Through not being a ratepayer at time of election as town councillor.]—A. was not a ratepayer at the time of his election as town councillor :—*Held* : (1) for a disqualification continuing after election, *quo warranto* was the proper remedy; (2) no distinction could be made between a disqualification at the time of the nomination & a disqualification existing at the time of the election.—*R. v. MACK* (1907),

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Sub-sect. 1, D., E., F. & G.]

writing but without deed.—*R. v. PAYNE* (1818), 2 Chit. 367.

E. Abolition of Office.

1906. Effect of abolition of office.]—A quo warranto information issued for holding an annual office, after its close, tries a civil right.—*R. v. NEW RADNOR (ALDERMEN)* (1759), 2 Keny. 498; 96 E. R. 1257.

Annotation:—*Reid. R. Harris* (1837), 6 Ad. & El. 475.

1907. —.]—A party who had been appointed to, & was discharging, the office of town clerk of a borough, when Municipal Corpsns. Act, 1835 (c. 76), passed, was afterwards removed by the town council, & claimed compensation under sect. 60 of the Act. A motion was then made, at the instance of the corpn., for a quo warranto information against him for exercising the office, on the grounds that he was not a Burgess at the time, was not sworn in, & did not make the declaration required by 9 Geo. 4, c. 17:—*Held*: under the circumstances an information ought not to be granted for the purpose of trying the title to an office which was determined.—*Re HARRIS* (1837), 6 Ad. & El. 475; 1 J. P. 107, 355; 112 E. R. 182; *sub nom. R. v. HARRIS*, 1 Nev. & P. K. B. 576; Will. Woll. & Dav. 237; 6 L. J. K. B. 161; 1 Jur. 239.

F. Whether Quo Warranto the Appropriate Remedy.

1908. General rule.]—Quo warranto does not lie against the clerk of the comrs. of land-tax, but if he is improperly elected under 43 Geo. 3, c. 99, mandamus lies to the comrs. to admit the person who has the majority of legal votes.—*R. v. THATCHER* (1822), 1 Dow. & Ry. K. B. 426. **Annotation:—***Reid. R. Fox* (1838), 4 Jur. N. S. 410.

1909. —.]—An alderman of a municipal corpn. having died, the mayor, who was one of the councillors, called a meeting of the town council to elect a person to fill the vacancy. The mayor presided & caused a voting paper to be handed to each member of the council, & retained one himself. Upon the papers being examined, it was found that only the mayor & one other person had been voted for, each had the same number of votes, & the mayor had voted for himself. The mayor then gave his casting vote for himself, & declared himself duly elected:—*Held*: an information in the nature of a quo warranto would not lie against the mayor, as the validity of his election as alderman might have been questioned by an election petition.—*R. v. MORTON*, [1892] 1 Q. B. 39; 61 L. J. Q. B. 39; 50 J. P. 105; 40 W. R. 109; 36 Sol. Jo. 44; *sub nom. R. v. MORTON, Ex p. CUTTS*, 65 L. T. 611; 8 T. L. R. 50, D. C.

PART VII. SECT. 3, SUB-SECT. 1.—F.

1908 i. General rule.—Illegal election.—Remedy by mandamus not appropriate.]—*Re BENT, Ex p. ATTENBOROUGH* (1868), 5 W. W. & A.B. 103.—AUS.

1908 ii. —.]—LENNOX DRAINAGE BOARD (CHAIRMAN & MEMBERS) v. GALE (1915), 17 W. A. L. R. 180.—AUS.

1908 iii. —.]—The ct. will not grant a mandamus to try an election but will leave the parties contesting the validity of such election to their remedy by quo warranto.—*Re BROCKVILLE TOWN ELECTION OF MEMBERS OF POLICE BOARD* (1833), 3 O. S. 173.—CAN.

1908 iv. —.]—Cheap statutory remedy available.]—*R. v. ROACH* (1859),

18 U. C. R. 226.—CAN.

1908 v. —.]—*Re KELLY v. MACAROW* (1864), 14 C. P. 313, 457.—CAN.

h. —Right to exercise office.]—*Ex p. RICHARDS* (1870), 2 Han. 131.—CAN.

k. —Where election legal.—But subsequent disqualification.—Quo warranto not appropriate.]—*R. v. LAWLOR* (1870), 5 P. R. 208.—CAN.

l. —Quo warranto appropriate.]—*COUGHLAN & MAYO v. VICTORIA CITY* (1893), 3 B. C. R. 57.—CAN.

m. —Not where right may be determined by action.]—*R. v. MABONY* (1851), 3 Ir. Jur. 29.—IR.

1911 i. —Where qualification of

electors in doubt.]—*Held*: the ct. had jurisdiction to order a petition against the election of the sheriff of a city to be taken off the file, it being admitted that the remedy was not by way of petition, but by quo warranto.—*POPE v. BRUTON* (1900), 17 T. L. R. 182, D. C.

1911. —Where qualification of electors in doubt.—Remedy by fresh election available.]—Where leave to lay an information in the nature of quo warranto had been applied for against one for exercising the office of bridge-master in the borough of B. & it appeared that he had been chosen by the populace without authority:—*Held*: the corpn. might have gone to a new election the next charter day without applying to the ct. to remove him & the rule would be discharged.—ANON. (1730), 1 Barn. K. B. 345; 94 R. R. 233.

1912. —.]—ANON. (1731), 2 Barn. K. B. 46; 94 E. R. 347.

1913. —.]—On a rule to show cause why an information in the nature of quo warranto should not go against deft. for exercising the office of recorder of F. the question was whether deft. was properly elected:—*Held*: the point was not so clear in favour of deft. as to have it determined upon a motion, & the rule would be made absolute.—*R. v. SANDYS* (1733), 2 Barn. K. B. 301; Kel. W. 268; 94 E. R. 514.

1914. —.]—A motion for a writ of quo warranto founded on the ground that one of the justices who had voted at the election of a county treasurer had not taken the qualification oath will not be granted against the county treasurer to show by what authority he holds the office, if he has been de facto elected by the justices in quarter sessions.—*R. v. HEREFORDSHIRE JJ.* (1819), 1 Chit. 700.

Annotation:—*Reid. Darley v. R.* (1846), 12 Cl. & Fin. 520.

1915. —.]—The title of the electors, corporators de facto, cannot be put in issue in a quo warranto information against the elected.—*R. v. HUGHES* (1825), 4 B. & C. 368; 6 Dow. & Ry. K. B. 443; 3 Dow. & Ry. M. C. 250; 3 L. J. O. S. K. B. 249; 107 E. R. 1096.

Annotations:—*Distd. R. v. Chetwynd* (1828), 1 Man. & Ry. K. B. 534. *Reid. R. v. Tugwell* (1868), 9 B. & S. 367.

1916. —Officer of incorporated mercantile companies.—Of City of London.]—Qu.: whether a quo warranto information lies at the instance of a private relator, against a person claiming to hold an office in one of the incorporated mercantile companies of the City of London.—*R. v. ATTWOOD* (1833), 4 B. & Ad. 481; 1 Nev. & M. K. B. 286; 2 L. J. K. B. 57; 110 E. R. 536.

Annotation:—*Mentd. R. v. Powell* (1854), 3 E. & B. 377.

1917. —Irregularity at election.—Not affecting result.]—The ct. will not allow an information in the nature of a quo warranto to be filed to try the title to an office, merely because there has been

electors in doubt.]—Where there has been a formal election, & an objection has been made to a person or persons as not being duly qualified to vote at such election, a quo warranto would be the proper writ to issue.—*R. v. TUDAM TOWN COMRS.* (1859), 11 Ir. Jur. 48.—IR.

1911 ii. —.]—A quo warranto will not be granted to try by what title a party exercises the office of mayor of a borough, when the ground of such appln. is a defect in the title of those who have elected him mayor.—*R. v. MCCARTHY* (1850), 10 I. C. L. R. 312.—IR.

1917 i. —Irregularity of appointment to public office.]—An injunction was sought to restrain defts. from acting as pilots on the ground that the

g. *Registrar of deeds.*—A quo

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the Crown, therefore an information ought to go (PRATT, C.J.).—*R. v. NICHOLS* (1720), 11 Mod. Rep. 324; 1 Stra. 299; 88 E. R. 1060.

*Annotations:—*Consd. Darley v. R. (1846), 12 Cl. & Fin. 520. *Refd.* R. v. Marsden (1765), 3 Burr. 1812.

1928. — Clerk to.]—*Re* WHITEHAVEN HARBOUR TRUSTEES, *Ex p.* — (1848), 11 L. T. O. S. 228; 12 J. P. Jo. 455.

1929. — Under private Act.]—This was a rule *nisi* for a *quo warranto* calling on defts. to show by what right they exercised the office of trustees under a private Act regulating the repair, etc. of certain private property:—*Held*: a writ of *quo warranto* would not lie in cases of this kind when the office was merely for the management of private property.—*R. v. VARTY* (1843), 1 L. T. O. S. 287.

Vestry clerks & vestrymen.]—*See* ECCLESIASTICAL LAW.

SUB-SECT. 2.—FRANCHISES.

1930. General rule.]—Where a franchise has been exercised from very remote times, under circumstances which make it reasonable to suppose that it emanated from a grant by the Crown, & there has, at no period, been any considerable opposition to it, the ct. will not allow an information in the nature of a *quo warranto* to try its validity, merely on the ground that it cannot be distinctly traced to a legal origin, especially if the franchise has been partially recognised in any ancient statute, & therefore, the ct. discharged a rule under these circumstances for an information against the Vice-Chancellor of Cambridge, to try the validity of his title to grant licences to the ale-houses.—*R. v. ARCHDALL* (1838), 8 Ad. & El. 281; 3 Nev. & P. K. B. 696; 1 Will. Woll. & H. 440; 2 J. P. 486; 2 Jur. 1083; 112 E. R. 843.

*Annotations:—**Refd.* *Re* Oxford University & Taylor (1841), 1 Q. B. 952; Kemp v. Neville (1861), 10 C. B. N. S. 523. *Mentd.* R. v. Canterbury Archbp. (1848), 11 Q. B. 483.

1931. Court of record.]—Informations in the nature of *quo warranto* will lie for holding a ct. of record & presiding therein in the absence of the bailiffs, deft. not being one of them.

Costs are not given on an information in the nature of *quo warranto*, unless on usurpation of offices or freedoms in corps.—*R. v. WILLIAMS* (1757), 1 Burr. 402; 2 Keny. 68; 1 Wm. Bl. 93; 97 E. R. 371.

*Annotations:—*Consd. *R. v. Wallis* (1793), 5 Term Rep. 375; *R. v. McKay* (1826), 5 B. & C. 640; Lloyd v. R. (1862), 2 B. & S. 656. *Refd.* Darley v. R. (1846), 12 Cl. & Fin. 520; R. v. Grimshaw (1847), 17 L. J. Q. B. 19. *Mentd.* Salkeld v. Johnson (1848), 2 Exch. 256; R. v. Backhouse (1866), 7 B. & S. 911.

1932. Ferry.]—An information in the nature of a *quo warranto* will lie for claiming an exclusive ferry over the Thames.—*R. v. REYNELL* (1742), 2 Stra. 1161; 93 E. R. 1100.

*Annotation:—**Refd.* R. v. Marsden (1765), 3 Burr. 1812.

Manorial courts.]—*See* COPYHOLDS, Vol. XIII., p. 35, Nos. 359, 363–365.

SECT. 4.—THE APPLICATION.

SUB-SECT. 1.—IN GENERAL.

See C. O. R., rr. 40–44; Municipal Corporations Act, 1882 (c. 50), s. 225.

warranto information was refused to try the right to the office of registrar of deeds.—*Re* HAMMOND & MOLAY (1864), 24 U. C. R. 56.—CAN.

*r. Surgeon or physician — In institution privately founded.]—*The office of surgeon or physician to a private charitable institution is not an

1933. When application may be made—Not on last day of term.]—*Re* WORCESTER COUNTY COURT JUDGE (1847), 11 J. P. Jo. 438.

1934. Successive applications—On same ground—Previous decision impeached.]—A rule for a *quo warranto* information against a mayor, on the ground that he did not reside as the charter required, was discharged on affidavits, showing residence. Afterwards a second rule was obtained, on the same ground, on affidavits impeaching the former opposing affidavits, & tending to show that the residence was colourable. The rule was discharged, on the ground that a second application ought not to have been made after the former decision, but without costs, as the ct. had granted the rule *nisi*.—*R. v. ORDE* (1831), 8 Ad. & El. 422. n.; 112 E. R. 898.

*Annotations:—**Refd.* R. v. Pickles (1842), 12 L. J. Q. B. 40; Dodgson v. Scott (1848), 2 Exch. 457. *Mentd.* Tilt v. Dickson (1847), 4 C. B. 736.

1935. — Against successor in office.]—Where a relator has twice obtained rules *nisi* for informations in the nature of a *quo warranto*, calling upon a party to show why he exercised the office of mayor of a borough, which rules have been discharged upon cause shown, the ct. will not allow the same relator on an application against the succeeding mayor to raise the same questions as to the title of the former mayor to exercise the office.—*R. v. LANGHORN* (1833), 2 Nev. & M. K. B. 618.

1936. — While first rule pending.]—*Re* UDELL (1844), 3 L. T. O. S. 34; *sub nom.* *Re* UDALL, 8 J. P. Jo. 279.

1937. On failure of substantial ground of application—Rule not granted on secondary or supplemental ground.]—Where an information in nature of *quo warranto* was moved for on the ground of a disputed mode of election, which alone was in controversy at the time of deft.'s election, & which ground was afterwards answered on showing cause, the ct. would not in their discretion make the rule absolute to try another incidental & secondary question, as to whether there were a sufficient interval of time allowed between the nomination & election of deft. no person's right having been set aside by means of such acceleration of the election, if it were accelerated.—*R. v. OSBOURNE* (1803), 4 East, 327; 102 E. R. 856.

SUB-SECT. 2.—WHO MAY APPLY.

A. The Attorney-General.

1938. Against a corporation.]—Charles II. finding that the City of London could not be wrought on to surrender their charter resolved to have it condemned by a judgment in the King's Bench. The A.-G. accordingly proceeded against the Lord Mayor & Commonalty & Citizens of London by information in the nature of *quo warranto* which alleged that the Mayor, etc., had usurped & were usurping liberties, privileges & franchises upon the King. The matter chiefly alleged against the corp. was their levying money on the King's subjects coming to public markets, etc.:—*Held*: there must be judgment against the corp.—*QUO WARRANTO CASE, R. v. LONDON CORPN.* (1683), 8 State Tr. 1039; E. B. & E. 122, n.; 120 E. R. 453.

*Annotations:—**Refd.* Edwards v. Mid. Ry. (1880), 6 Q. B. D. 287. *Mentd.* G. E. Ry. v. Goldsmid (1884), 54 L. J. Ch. 162.

office, the right to hold which could be inquired into by *quo warranto*.—*R. v. AUCHINCLOSS* (1891), 28 L. R. Ir. 404.—IR.

1939. —.]—On motion for an information in the nature of *quo warranto* against deft., the mayor of B., for that the then mayor of B. had in 1683 surreptitiously surrendered the old patent by a wrong name & got a new one with new powers which was being acted upon & was void, being grounded on a void surrender:—*Held*: the right of a particular person only was not in question but the being of the whole corp., for which reason it would be proper on the application of the A.-G. for the Crown, & the motion must be denied.—*R. v. MORGAN* (1719), 11 Mod. Rep. 308; 88 E. R. 1057.

1940. — Construction of 9 Anne, c. 20, s. 4.]—(1) Information *quo warranto* will not lie against a whole corp. at the relation of a private person. (2) Before the above Act, all informations in nature of *quo warranto* were filed by the A.-G., & this statute extended only to officers in corps., & not to corps. themselves.—*R. v. CARMARTHEN CORPN.* (1759), 1 Wm. Bl. 187; 2 Burr. 869; 96 E. R. 99.

Annotations:—As to (1) *Refd. R. v. Ogden* (1829), 10 B. & C. 230; *R. v. White* (1836), 5 Ad. & El. 613.

1941. —.]—An information in the nature of *quo warranto*, against persons for claiming to act as a corp., must be filed by & in the name of the A.-G. Such an information cannot be filed at the instance of an individual against persons for usurping a franchise of a private nature, not connected with public government.—*R. v. OGDEN* (1829), 10 B. & C. 230; 109 E. R. 436.

Annotations:—*Consd. R. v. White* (1836), 5 Ad. & El. 613. *Refd. R. v. Lloyd* (1860), 2 L. T. 232.

1942. — Or public body.]—When a body, whether corporate or not, is created by the Legislature for public purposes, & the statutory powers of that body are usurped, the intervention of the A.-G. is required.—*R. v. STAPLES* (1867), 9 B. & S. 928, n.

B. Private Relator.

(a) In General.

1943. Against member of corporation—On grounds affecting individual title.]—The ct. will grant a *quo warranto* information, at the instance of a private relator, against a member of a corp., on grounds affecting his individual title, although it be suggested that the same objections apply to the title of every member, & therefore the application is, in effect, against the whole corporate body.—*R. v. WHITE* (1836), 5 Ad. & El. 613; 2 Har. & W. 403; 1 Nev. & P. K. B. 84; 6 L. J. K. B. 23; 111 E. R. 1297.

Annotation:—*Refd. R. v. Parry* (1837), 6 Ad. & El. 810.

1944. Substitution of relator—Original relator indigent.]—*R. v. LATHAM* (1764), 2 M. & S. 346, n.; 3 Burr. 1485; 105 E. R. 410, n.; *sub nom. R. v. LATHORP*, 1 Wm. Bl. 468.

Annotation:—*Mentd. R. v. Hughes* (1825), 4 B. & C. 368.

PART VII. SECT. 4, SUB-SECT. 2.— B. (a).

a. Against member of corporation.—Not clerk of corporation.]—It is not desirable that clerks of municipal councils, having custody of papers of the corp., should be relators to unseat members of the council, of which they are clerks.—*R. v. DELISLE* (1862), 8 U. C. L. J. O. S. 291.—CAN.

t. Any interested person.]—*HEFFERNAN & WALSH* (1886), 33 L. C. J. 46.—CAN.

1944 i. Substitution of relator—Original relator desiring to withdraw.]—Where relator in a *quo warranto* proceeding under Consolidated Municipal Act, 1892, desires to withdraw,

the ct. has no power to compel him to go on against his will, nor to substitute a new relator.—*R. v. BUTLER* (1897), 17 P. R. 382.—CAN.

1947 i. When private rights interfered with—Although existence of corporation may be affected.]—*R. v. Ego* (1910), 15 W. L. R. 506.—CAN.

PART VII. SECT. 4, SUB-SECT. 2.— B. (b).

a. Must show interest.]—*R. v. BELL* (1868), 4 P. R. 226.—CAN.

b. —.]—*R. v. JULL* (1869), 5 P. R. 41.—CAN.

c. —.]—An application for leave to exhibit an information by way of *quo warranto* to unseat a person as

1945. — Solicitor acting for both parties.]—*R. v. ALDERSON* (1839), 11 Ad. & El. 3; 3 Per. & Dav. 2; 113 E. R. 312; *subsequent proceedings* (1841), 1 Q. B. 878.

1946. May act through substitute—Use of name.]—*R. v. CARR* (1853), 20 L. T. O. S. 192, 235; 17 J. P. Jo. 54, 102.

1947. When private rights interfered with—Although existence of corporation may be affected.]—*R. v. LLOYD* (1860), 2 L. T. 232; *subsequent proceedings, sub nom. LLOYD v. R.* (1862), 2 B. & S. 656, Ex. Ch.

(b) Conditions Precedent.

1948. Must show title.]—It is not sufficient in a *quo warranto* of liberties to derive an interest to a stranger in them from the Queen without making a title to himself for the writ is *quo warranto* he himself useth them (*per CUR.*).—*PARTRIDGE'S CASE* (1593), Cro. Eliz. 125; 78 E. R. 382; *sub nom. R. & PARTRIDGE'S CASE*, 2 Leon. 28; *sub nom. PARTRIDGE'S CASE*, 2 Leon. 212.

1949. — By custom.]—The office of constable being a burthensome office, the ct. will not put a person *de facto* elected, & sworn in by the ct. leet, to the expense of showing by what authority he holds the office, at the relation of a different body of persons claiming the right of election, where those persons do not show an immemorial custom in their body to elect.—*R. v. LANE* (1822), 5 B. & Ald. 488; 1 Dow. & Ry. K. B. 76; 1 Dow. & Ry. M. C. 25; 106 E. R. 1269.

1950. Must show interest—Objection to member of corporation—Stranger.]—A *quo warranto* application was made against deft. for claiming to be a freeman of the borough of S. at the relation of W. who was a stranger to the corp., & who rested the application on his own affidavit:—*Held*: the rule would be discharged.

It is to be considered who W. is. If he had shown that his own & other persons' privileges had been injured, he would perhaps have had reason for preferring this complaint, but the fact is otherwise (*LORD KENYON, C.J.*).—*R. v. KEMP* (1789), 1 East, 46, n.; 102 E. R. 19.

Annotation:—*Refd. R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595.

1951. — — —.]—*R. v. BROWN* (1789), 3 Term Rep. 574, n.; 100 E. R. 740.

Annotation:—*Refd. R. v. Speyer, R. v. Cassel*, [1916] 1 K. B. 595.

1952. — — — Inhabitant—Subject to municipal government.]—*Quo warranto* against deft. as one of the chief burgesses of P. An objection was taken that there was not a sufficient relator. It appeared that the relator was an inhabitant of the borough, & that by the charter the government of the town, & of all the people therein, was vested in the mayor & chief burgesses:—*Held*: this clause of the charter gave a sufficient interest to the relator, & the rule should be made absolute.—

school trustee should be dismissed if the relator is a person not really interested in the matter complained of, but merely put forward as a nominal relator by the real prosecutor because of the latter's want of qualification to be such relator.—*R. v. QUENNET* (1909), 11 W. L. R. 96; 19 Man. L. R. 23.—CAN.

1950 i. — Objection to member of corporation—Owner of rated property—Although not voter or resident.]—*R. v. ST. JEAN* (1881), 46 U. C. R. 77.—CAN.

d. — Objection to judge holdin office—Inhabitant—Although not resident within judge's district.]—*R. v. ROGERS, Ex p. LEWIS* (1878), 4 V. L. F. 334.—AUS.

Sect. 4.—The application: Sub-sect. 2, B. (b) & (c); sub-sect. 3.]

R. v. HODGE (1819), 2 B. & Ald. 344, n.; 100 E. R. 392.

Annotation:—Reid. R. v. Parry (1837), 6 Ad. & El. 810.

1953. — — — — —.]—*R. v. PARRY, No. 1847, ante.*

1954. — — — — — **Although not a burgess.]**—An information in the nature of a *quo warranto* will be granted against a party for claiming to be a councillor of a borough, on affidavit that he has taken upon himself the office, & acted in that capacity. An inhabitant of a borough may be a relator though he is not a burgess.—*R. v. QUAYLE (1840), 11 Ad. & El. 508; 4 Per. & Dav. 442; 10 L. J. Q. B. 231; 5 J. P. 30; 5 Jur. 386; 113 E. R. 508; subsequent proceedings (1841), 9 Dowl. 548.*

Annotations:—Reid. R. v. Anderson (1842), 6 J. P. 105; R. v. Tugwell (1868), L. R. 3 Q. B. 704. Mentd. R. v. Collins (1875), 23 W. L. 325.

1955. — — — — — **Burgess.]**—Any burgess is a competent relator in *quo warranto* against a party exercising the office of town clerk, though the right of electing to that office be in a select body. The town clerk, as soon as he is chosen, is a ministerial officer, in whom all the burgesses have an interest.—*R. v. DAVIES (1828), 1 Man. & Ry. K. B. 538; 1 Man. & Ry. M. C. 205; 6 L. J. O. S. K. B. 170.*

1956. — — — — — **Owner of rated property.]**—Where, upon a rule for a *quo warranto* information against A. for exercising the office of a town comr., to which he had been elected by ratepayers, the relator was, as it was alleged, not entitled to vote, yet, as he was an owner of rated property in the town:—*Held: he had sufficient interest to be a good relator.—R. v. BRIGGS (1864), 11 L. T. 372; 29 J. P. 423.*

(c) Disqualifications of.

1957. Acquiescence by relator.—In defendant's title.]—A derivative title shall not be impeached by those who have acquiesced & acted under it.

I remember when it was so much the practice of the ct. to grant *quo warranto* informations as of course that it was held prudent never to show cause against the rule, for fear of disclosing the grounds on which the party went. But now, since these matters have come more under consideration, it is no longer a motion of course, & the ct. are bound to consider all the circumstances of the case (*LORD MANSFIELD, C.J.*).—*R. v. STACEY (1785), 1 Term Rep. 1; 99 E. R. 938.*

Annotations:—Distd. R. v. Morris, R. v. Stewart (1803), 3 East, 213. Reid. R. v. Dicken (1791), 4 Term Rep. 282; R. v. Ward (1873), L. R. 8 Q. B. 210; Darley v. R. (1846), 12 Cl. & Fin. 520. Mentd. Julius v. Oxford Bp. (1880), 5 App. Cas. 214.

1958. — — — — — **In defendant's election.—By joint deposit of affidavits.—Other than relator.]**—An application for a *quo warranto* information made on the affidavits of several persons, of whom all but one have consented to the election proposed to be impeached, may be granted on the affidavit of that one if he avow himself to be the relator.—*R. v. SYMONS (1791), 4 Term Rep. 223; 100 E. R. 985.*

Annotations:—Folld. R. v. Parkyn (1831), 1 B. & Ad. 690. Consd. R. v. Parry (1837), 6 Ad. & El. 810.

1959. — — — — — **Knowledge of objection.]—R. v. DAWES, No. 1845, ante.**

1960. — — — — —.]—It is a valid objection to a relator applying for a *quo warranto* information, that he was present & concurred at the time of the objectionable election, even though he was then ignorant of the objection. for a corporator must be taken to be cognizant of the contents of his own charter & of the law arising therefrom.—*R. v. TREVENEN (1819), 2 B. & Ald. 389; 100 E. R. 391; subsequent proceedings, 2 B. & Ald. 479.*

Annotations:—Distd. R. v. Benney (1831), 1 B. & Ad. 684. Reid. R. v. Slythe (1827), 6 B. & C. 240; Darley v. R. (1846), 12 Cl. & Fin. 520. Mentd. R. v. Wakelin (1830), 1 B. & Ad. 50.

— — — — —.]—A corporator who has voted at an election of corporate officers, is not a competent relator to impeach that election on the ground of an objection to the presiding officer, at least without showing that he was ignorant of the objection when he voted at the election.

It is a general rule of corp. law, that a corporator is estopped from coming forward as a relator to impeach a title conferred by an election in which he has concurred, or the titles of those mediately or immediately claiming through that election (*ABBOTT, C.J.*).—*R. v. LANE, R. v. COBBOLD (1827), 9 Dow. & Ry. K. B. 183; 4 Dow. & Ry. M. C. 293.*

1962. — — — — —.]—(1) Where a corporator has attended & voted at a meeting for the election of officers of the borough, he will not be allowed to become relator in *quo warranto*, & impeach the titles of the persons there elected on account of an objection to the title of the presiding officer, unless he shows that at the time of the election he was ignorant of the objection.

(2) An affidavit to found a motion for *quo warranto* is sufficient if it states the deponent's information & belief that the party against whom the application is made has exercised the office.—*R. v. SLYTHE (1827), 6 B. & C. 240; 9 Dow. & Ry. K. B. 181, 226; 4 Dow. & Ry. M. C. 291, 305; 5 L. J. O. S. M. C. 41; 108 E. R. 441.*

Annotation:—As to (2) Reid. R. v. Ireland (1868), 37 L. J. Q. B. 73.

1963. — — — — — **In previous election.]**—It is a valid objection to a relator applying for a *quo warranto* information for usurping the office of burgess, that he concurred in the election of another burgess, when the objection he sought by the application to avail himself of was taken & overruled, & voted for the party then elected.—*R. v. PARKYN (1831), 1 B. & Ad. 690; 109 E. R. 943; sub nom. R. v. BENNEY, R. v. PARKYN, 9 L. J. O. S. K. B. 104.*

1964. — — — — — **Administration of statutory declaration.]**—On motion for a *quo warranto* information for exercising the office of councillor while disqualified by Municipal Corpn. Act, 1835 (c. 76), s. 28:—*Held: a borough officer who administered to such councillor the declaration prescribed by sect. 50 of the Act knowing of the disqualification, could not be heard as relator, although he took no further part in the election than by supporting an unsuccessful candidate, and acquiescing in the result.—R. v. GREENE (1842), 2 Q. B. 460; 2 Gal. & Dav. 24; 11 L. J. Q. B. 107; 6 J. P. 169; 6 Jur. 777; 114 E. R. 182.*

1965. — — — — —.]—*R. v. FRANCIS, No. 1993, post.*

1966. — — — — —.]—A relator in a *quo warranto* rule, who has acquiesced in & himself

PART VII. SECT. 4, SUB-SECT. 2.—B. (c).

1958 I. Acquiescence by relator.—In defendant's election.]—An elector who, at a nomination meeting, acquiesces in a statement of fact by the returning

officer, which, if true, would entitle defendants to sit, & himself becomes a candidate on the strength of that statement, cannot be heard as relator.—*R. v. BRADBURN (1876), 6 P. R. 308.—CAN.*

1958 II. — — — — —.]—A rule for *quo warranto* will not be granted to a relator who has participated in the alleged irregularities on which he bases his application.—*R. v. COLCLOUGH (1882), 1 N. Z. L. R. 129.—N.Z.*

adopted the mode of voting he now objects to, is disqualified from applying for such a rule.—*R. v. LOFTHOUSE* (1866), L. R. 1 Q. B. 433; 7 B. & S. 447; 35 L. J. Q. B. 145; 30 J. P. 453; 12 Jur. N. S. 619; 14 W. R. 649; *sub nom.* *R. v. LOCKHOUSE & WILSON*, 14 L. T. 359.

Annotations:—*Mentd.* *R. v. Backhouse* (1866), L. R. 2 Q. B. 16; *R. v. Collins* (1876), 1 Q. B. D. 336.

1867. — **Objection to burgess list.**—*R. v. PARRY*, No. 1847, *ante*.

1868. — **In collusive election.**—*R. v. JONES*, No. 2011, *post*.

1869. **What is acquiescence—Not co-operation in corporation business.**—*R. v. CLARKE* (1800), 1 East, 38; 102 E. R. 15.

Annotations:—*Distd.* *R. v. Trevenen* (1819), 2 B. & Ald. 339. *Consd.* *R. v. Benney* (1831), 1 B. & Ad. 684. *Distd.* *R. v. Greene* (1842), 2 Q. B. 460. *Consd.* *R. v. Lofthouse* (1866), L. R. 1 Q. B. 433. *Mentd.* *R. v. Speyer*, *R. v. Cassel* (1915), 32 T. L. R. 211.

1870. — **—**—*R. v. BENNEY* (1831), 1 B. & Ad. 684; 109 E. R. 941; *sub nom.* *R. v. BENNEY*, *R. v. PARKYN*, 9 L. J. O. S. K. B. 104. *Annotation*:—*Refd.* *R. v. Parkyn* (1831), 1 B. & Ad. 690.

1871. **Defect of title—Similar to that alleged against defendant.**—The circumstance of the relator's title standing in the same situation as deft.'s will govern the discretion of the ct. in refusing an application for an information in the nature of a *quo warranto*.—*R. v. BOND* (1788), 2 Term Rep. 767; 100 E. R. 413.

Annotation:—*Distd.* *R. v. Mortlock* (1789), 3 Term Rep. 300. **1872.** — **—**—*R. v. CUDLIPP* (1796), 6 Term Rep. 503; 101 E. R. 670.

Annotations:—*Consd.* *R. v. Trevenen* (1819), 2 B. & Ald. 339. *Fold.* *R. v. Cowell* (1825), 6 Dow. & Ry. K. B. 336. *Refd.* *R. v. Benney* (1831), 1 B. & Ad. 684.

1873. — **Whether cured by long tenure.**—The ct. will not file a *quo warranto* information against one corporator for defect of title, at the instance of another whose title is equally deficient, although the latter has enjoyed his office many years uninterruptedly.—*R. v. COWELL* (1825), 6 Dow. & Ry. K. B. 336; 3 Dow. & Ry. M. C. 242.

1874. **Agreement not to enforce bye-law—On which application grounded.**—The ct. refused to grant an information in nature of a *quo warranto*, because the party applying for it had agreed not to enforce a bye-law upon which he now grounded his attempt to impeach deft.'s title.—*R. v. MORTLOCK* (1789), 3 Term Rep. 300; 100 E. R. 587.

Annotations:—*Consd.* *R. v. Parkyn* (1831), 1 B. & Ad. 690. *Refd.* *R. v. Jones* (1837), Will. Woll. & Dav. 673.

1875. **Attendance at defendant's election—Voting for another candidate.**—It is no objection to the persons applying for an information in nature of a *quo warranto* that they attended the meeting at which the mayor was elected, whose election they impeach, & voted for another candidate, & afterwards attended other corporate meetings at which such mayor presided.—*R. v. MORRIS*, *R. v. STEWART* (1803), 3 East, 213; 102 E. R. 579.

Annotations:—*Refd.* *R. v. Trevenen* (1819), 2 B. & Ald. 339; *R. v. Slythe* (1827), 6 B. & C. 240. *Mentd.* *R. v. Bower* (1823), 1 B. & C. 492.

1876. **Defendant's legal adviser—Acting contrary to previous advice.**—Where the relator, on an application for a *quo warranto* information, is the legal adviser of the deft. & has advised him that

he was duly elected, the ct. will discharge the rule for the *quo warranto*.—*R. v. PAYNE* (1818), 2 Chit. 389.

1877. **Withdrawal of objection to qualification—Of defendant.**—A party is not disqualified from being relator in a *quo warranto* against a deft. for filling the office of town councillor, by having withdrawn an objection to his name remaining on the burgess roll, after the ct. of revision had overruled the same objection in another case.—*R. v. HUXHAM* (1840), Arn. & H. 80; 4 Jur. 1133.

1878. **Negligence of—In relation to election of defendant—Where acting as town clerk.**—*R. v. MALMSBURY CORPN.* (1722), 8 Mod. Rep. 55; 88 E. R. 45.

1879. **Indigence of—Where collusive motion—Security for costs.**—It is no objection to the granting of an information in the nature of *quo warranto*, that the person applying is indigent, & there is ground of suspicion that he is applying not on his own account or at his own expense, but in collusion with a stranger. The ct., however, required security for costs.—*R. v. WAKELIN* (1830), 1 B. & Ad. 50; 8 L. J. O. S. K. B. 366; 109 E. R. 706.

Annotation:—*Refd.* *R. v. Dixon* (1849), 12 L. T. O. S. 347.

1880. **Bribery by—At election of defendant.**—It is no ground for discharging a rule *nisi* for a *quo warranto* calling on deft. to show by what authority he exercises the office of town councillor, that it is alleged, on the part of deft. that the relator was guilty of bribery at the election in question.—*R. v. BRIGGS* (1853), 20 L. T. O. S. 277; 1 W. R. 164; 17 J. P. Jo. 102.

SUB-SECT. 3.—LIMITATION AS TO TIME FOR.

See Municipal Corporations Act, 1882 (c. 50), consolidating previous enactments.

1881. **Six years peaceable possession—Sufficiency of.**—The ct. will not grant a *quo warranto* information against a person who has been in the peaceable possession of his franchise six years.—*R. v. DICKEN* (1791), 4 Term Rep. 282; 100 E. R. 1020.

Annotations:—*Refd.* *R. v. Preece* (1843), 7 J. P. 754; *R. v. Speyer*, *R. v. Cassel*, [1916] 1 K. B. 595.

1882. *S. P. R. v. BROOKS* (1828), 8 B. & C. 321; 2 Man. & Ry. K. B. 389; 1 Man. & Ry. M. C. 425; 6 L. J. O. S. K. B. 322; 108 E. R. 1062.

1883. — **How time runs—Whether from rule absolute—32 Geo. 3, c. 58.**—The above Act which enables a person to plead that he held or executed an office six years before exhibiting a *quo warranto* information, means six years before making the rule absolute for the information, & not six years before obtaining the rule *nisi*; & therefore the ct. refused to make the rule absolute where the six years had then elapsed, though they had not elapsed before the rule *nisi*; but a title to one office which is a qualification to hold another office is not within sect. 3 of the statute respecting derivative titles, & therefore although the party had exercised the first for six years, the ct. made the rule absolute for an information for exercising

e. What is acquiescence—Acquiescence to wrongful payment to defendant another member of the board.—A trustee of a public school board is not precluded from becoming a relator in a *quo warranto* proceeding against another member of the board because he acquiesced in the payment of an account rendered for services which disqualified the member rendering the same from holding the office of trustee.

—*R. v. STANDISH* (1884), 6 O. R. 408.—**CAN.**

f. ——**—**—A member of the board who voted for payment of the account of a brother member for wood supplied for the school would not be qualified to be relator in proceedings to unseat the latter by reason of such payment.—*R. v. QUESNEL* (1909), 11 W. L. R. 96; 19 Man. L. R. 23.—**CAN.**

1871 i. Defect of title—Similar to that alleged against defendant.—*R. v. BRACKEN* (1832), Alc. & N. 113.—**IR.**

1871 ii. ——**—**—Acquiescence of the relator, in practices statutorily declared illegal, would not constitute an answer to the application for a *quo warranto* in respect of an office statutorily vacated by such illegality.—*R. v. LANGTON* (1887), 20 L. R. Ir. 46.—**IR.**

Sect. 4.—The application: Sub-sects. 3 & 4, A. & B.] the second office upon a defect of title to the first.—*R. v. STOKES* (1813), 2 M. & S. 71; 105 E. R. 308. *Annotation:—Refd. R. v. Preece* (1843), 5 Q. B. 94.

1984. — — — — — —.]—The ct. refused to make a rule absolute for a *quo warranto* information, under 32 Geo. 3, c. 58, where it appeared that the office would have been exercised more than six years before making the rule absolute, though the rule *nisi* had been obtained within the six years.—*R. v. HARRIS* (1840), 11 Ad. & El. 518; 8 Dowl. 499; 3 Per. & Dav. 266; 9 L. J. Q. B. 114; 4 Jur. 459; 113 E. R. 512.

1985. — Whether rule limited to private or quasi-private officers.]—The Solr.-General has called attention to a further objection which applies only to the case of resp. C., namely, the lapse of time, & the rule laid down by this ct. in *R. v. Dicken* [No. 1981, ante], limiting the time for applications of this nature to six years. But as at present advised I doubt if there is any authority for the contention in answer that the rule only applies to private or quasi-private offices (AVORY, J.).—*R. v. SPEYER*, *R. v. CASSEL*, [1916] 1 K. B. 595; 85 L. J. K. B. 630; 114 L. T. 463; 32 T. L. R. 211, D. C.; *affd.* on other grounds, [1916] 2 K. B. 858, C. A.

1986. Law before R. v. Dicken.]—*R. v. MALMSBURY CORPN.* (1722), 8 Mod. Rep. 55; *R. v. POWELL* (1723), 8 Mod. Rep. 165; *R. v. PIKE & PRIDEAUX* (1724), 3 Term Rep. 311; *R. v. HELLSTONE CORPN.* (1726), 3 Term Rep. 311; *R. v. TRURO BOROUGH* (1727), 1 Barn. K. B. 19; *R. v. STEPHENS* (1757), 1 Burr. 433; *R. v. LATHORP* (1764), 1 Wm. Bl. 468; *WINCHELSEA CAUSES* (1766), 4 Burr. 1962; *R. v. WARDROPER* (1767), 4 Burr. 2024; *R. v. DAWES* (1767), 4 Burr. 2022, 2120; *R. v. ROGERS* (1770), 4 Burr. 2523; *R. v. BINSTED* (1774), 1 Cowp. 75; *R. v. STACEY* (1785), 1 Term Rep. 1; *R. v. BOND* (1788), 2 Term Rep. 767; *R. v. NEWLING* (1789), 3 Term Rep. 310.

1987. Annual office—Discretion of court—Election within year—Derivative title impeached not within year.]—Where a person holds the office of mayor in a borough this ct. will not grant a rule calling on him to show by what warrant he holds it, although within twelve months after his election, on the ground of a defect in his title as alderman, if more than twelve months have elapsed since his election to the latter office, no peculiar reason being shown to induce it to exercise its discretion the other way.

A rule *nisi* for a *quo warranto* information is sufficient if it negatives the qualification on which it alleges that the officer, whose title is impeached, has been elected; it need not negative any possible qualification on which he might have been elected.—*R. v. PREECE* (1843), 5 Q. B. 94; 1 Dav. & Mer. 156; 12 L. J. Q. B. 335; 1 L. T. O. S. 360; 7 J. P. 754; 7 Jur. 896; 114 E. R. 1183.

Annotation:—Refd. R. v. Dixon (1850), 15 Q. B. 33.

1988. — Application within year—Proceedings for mandamus pending—Municipal Corporation Act, 1843 (c. 89).]—Where proceedings upon a *mandamus* were pending in consequence of the alleged improper erasure of voters from the burgess list, & the twelve months allowed by sect. 1 of the above Act would otherwise have expired, the ct. allowed a *quo warranto* information to be filed against the persons whose election was said to have been gained by the alleged improper erasure of voters.—*R. v. CLARKE* (1845), 1 New Pract. Cas. 234; 5 L. T. O. S. 215; 9 J. P. Jo. 386; *subsequent proceedings*, 9 J. P. Jo. 730.

1989. — Application after year—Application

for mandamus within time—Municipal Corporation Act, 1836 (c. 105).]—*R. v. SMITH, Ex p. FROST* (1856), 20 J. P. Jo. 82.

1990. Effect of delay—Decision impossible within the year.]—The ct. refused a *quo warranto* against a burgess, who was enrolled in Nov., where the application for the rule was not made until the last day of the succeeding Hilary term, in the absence of proof that good reasons existed for the delay, because the motion was made at such a time that the case could not come to a judgment till the year had expired.—*R. v. HODSON* (1842), 4 Q. B. 648, n.; 11 L. J. Q. B. 219; 6 Jur. 968; 114 E. R. 1043; *sub nom. R. v. HODGSON*, 6 J. P. Jo. 202.

Annotations:—Refd. R. v. Milner (1844), 3 L. T. O. S. 55; *Ex p. Hindmarsh* (1867), L. R. 3 Q. B. 12.

1991. — — — — — —.]—*R. v. ANDERSON*, No. 2006, post.

1992. — Deliberate design to defeat Act.]—*R. v. NORMAN* (1865), 29 J. P. Jo. 407.

1993. Disqualification for office—Interest in contract—How time runs—Municipal Corporations Act, 1835 (c. 76).]—Under sect. 28 of the above Act a person who has entered into a contract with the council, & been employed by them in respect of such contract, is disqualified from holding office, though such contract required the corpn. seal, & is not sealed. While such contract continues, the disqualification caused by it arises *de die in diem*, & during that time, mere knowledge in a relator that a councillor at the time of his election was disqualified by reason of interest in a contract does not prevent the relator from instituting proceedings in the nature of a *quo warranto* after a considerable lapse of time.—*R. v. FRANCIS* (1852), 18 Q. B. 526; 21 L. J. Q. B. 304; 16 J. P. 664; 16 Jur. 1045; 118 E. R. 199.

1994. — Time runs from date of disqualification—Municipal Corporation (General) Act, 1837 (c. 78), s. 23.]—S. was elected in 1868 an alderman of a borough, being then on & entitled to be on the burgess roll. In Oct. 1873, he was struck off the new burgess list, having ceased to occupy the qualifying premises many months before. On Jan. 6, 1874, he acted as alderman, & on Jan. 26 application was made for a *quo warranto*:—*Held*: S. became disqualified within sect. 23 of the above Act when he ceased to occupy, which was conceded to be more than twelve months ago, & so ceased to be entitled to be on the burgess list, & the application was therefore too late.—*Ex p. BIRKBECK* (1874), L. R. 9 Q. B. 256; *sub nom. Re SHERRIFF, Ex p. BIRBECK*, 22 W. R. 299.

Annotation:—Consd. Middleton v. Simpson (1880), 5 C. P. D. 183.

1995. Derivative title—Original office held six years.]—The ct. will not grant a *quo warranto* information to impeach a derivative title, if the person claiming the original title has been in the undisturbed possession of his office six years.—*R. v. PEACOCK* (1792), 4 Term Rep. 684; 100 E. R. 1244.

Annotation:—Refd. R. v. Preece (1843), 7 J. P. 754.

1996. — — — — — —.]—*R. v. STOKES*, No. 1983, ante.

SUB-SECT. 4.—AFFIDAVITS.

A. In General.

1997. Whether admissible in defence.]—In a matter of right, where the party has no other remedy as in *quo warranto*, etc., affidavit against affidavit will not be received.—*R. v. POWSLEY* (1729), Fitz-G. 42; 94 E. R. 644.

1998. Material fact omitted by prosecutor—Supplied by defendant—May be adopted by prosecutor.]—If the affidavit in support of the rule for an information in the nature of a *quo warranto* omit a material fact, which is stated in the affidavit filed on the other side, the latter affidavit may be read by the prosecutor in support of his rule.—*R. v. MEIN* (1790), 3 Term Rep. 596; 100 E. R. 752; *subsequent proceedings* (1791), 4 Term Rep. 480.

Annotations.—*Consd. R. v. Stranger* (1871), L. R. 6 Q. B. 352. *Mentd. R. v. Bingham* (1802), 2 East, 308; *R. v. M'Kay* (1825), 4 B. & C. 351; *R. v. Hughes* (1825), 4 B. & C. 368.

1999. Hearsay may not be introduced.]—A party elected councillor by the casting vote of alderman & assessor, was sought to be removed by *quo warranto*. Appct. swore to no important fact of his own knowledge, but swore to two conversations with one of the assessors on the subject of the vote, & did not even swear to his belief of the truth of the communications made by the assessor.—*Held*: the rule would be discharged.—*R. v. TOOMER* (1838), 2 J. P. 119.

2000. All material facts must be set forth.]—Inasmuch as the affidavits upon which the rule [to show cause why an information in the nature of a *quo warranto* should not be filed] was obtained had not disclosed the whole case but suppressed many material facts the rule should be discharged with costs (LORD TENTERDEN, C.J.).—*R. v. HUGHES* (1828), 7 B. & C. 708; 1 Man. & Ry. K. B. 625; 6 L. J. O. S. K. B. 190; 108 E. R. 888.

Annotation.—*Mentd. Rutter v. Chapman* (1841), 5 J. P. 417.

2001. —.]—In a *quo warranto* the affidavits must set forth all the facts.

The ct. has a right to expect & will insist on facts essential to its decision being correctly & distinctly stated on the affidavits (LORD DENMAN, C.J.).—*R. v. HEWDALL* (1845), 5 L. T. O. S. 90; 9 J. P. 296.

2002. Statement of common knowledge insufficient.]—Upon an application for a *quo warranto* under Municipal Corpn. Act, 1843 (c. 89), s. 5, against a town councillor, on the ground that the votes for him were thrown away, an affidavit stating that at the time of his election the fact of his not being a householder was generally & notoriously known in & throughout the borough is not sufficient.—*R. v. BESTER* (1861), 3 L. T. 667; 25 J. P. 677; 9 W. R. 277; *sub nom. Re BESTER*, 7 Jur. N. S. 262.

2003. First affidavit insufficient—Whether second affidavit allowed to supplement.]—On motion for an information against deft. the rule was made absolute in the same term, no cause being shown. A few days afterwards an application was made on behalf of certain of the corporation to open the rule again that they might be permitted to show cause against the information, an additional

affidavit being offered in support of the original rule:—*Held*: the rule would be discharged.

Though by the rules of the ct. an affidavit may be received in support of the facts already alleged, yet new matter cannot be introduced to support the original rule (LORD KENYON, C.J.).—*R. v. NEWLING* (1789), 3 Term Rep. 310; 100 E. R. 593.

2004. Deponent bound by—Specific date.]—On motion for a *quo warranto* information, an affidavit stating the relator's information & belief that the officer was elected at a ct. held on a certain day, & there was not at the ct. where he was elected a proper number of electors present, is answered if it be sworn that there was a proper number of electors at the ct. held on the specified day, & that the officer was not elected at that ct. The officer is not bound to answer for the proceedings of any other day than that specified by the relator.—*R. v. ROLFE* (1833), 4 B. & Ad. 840; 1 Nev. & M. K. B. 773; 110 E. R. 672.

B. By Whom made.

2005. Relator—Sufficiency of.]—On a motion for a *quo warranto* an affidavit stating that it is the intention of deponent, in case the ct. should order the information to be filed, to become *bond fide* the relator, is insufficient.—*R. v. HEDGES* (1840), 11 Ad. & El. 163; 9 Dowl. 493; Woll. 63; 10 L. J. Q. B. 6; 4 J. P. 748; 5 Jur. 290; 113 E. R. 377.

2006. —.]—(1) It is sufficient for a relator to state in his affidavit that he has directed the application for the rule, that the motion will be made at his instance as relator, & that he shall be deemed relator, etc.

(2) Under special circumstances, the ct. in the exercise of its discretion discharged a rule for an information in the nature of a *quo warranto* against a burgess, the application being made so late, that it would not be disposed of before another revision of the burgess roll would be had.

If there had been any reason for questioning the title of A. it might have been at least expected that he should have made his application without such a delay as made it impossible to dispose of it before the revision for another year had taken place (WILLIAMS, J.).—*R. v. ANDERSON* (1842), 2 Q. B. 740; 2 Gal. & Dav. 113; 11 L. J. Q. B. 233; 6 J. P. 105; 114 E. R. 288.

Annotation.—*As to* (2) *Refd. R. v. Collins* (1876), 1 Q. B. D. 336.

2007. —.]—In moving for a *quo warranto*, the relator's affidavit must show that he is entitled to make the application.

Where a relator simply described himself as M. of B., tailor:—*Held*: this was insufficient.—*R. v. THIRLWIND* (1864), 3 New Rep. 489; 33 L. J. Q. B. 171; 9 L. T. 731; 10 Jur. N. S. 206; 12 W. R. 384.

not necessary, on an application for a *quo warranto* information, that an affidavit should be filed by the relator stating that the motion is made at his instance.—*Re SPENCE* (1863), 1 Old. 333.—CAN.

2005 II. —.]—In a *quo warranto* proceeding it is necessary for relator to file the affidavits & material to be used in support of his motion before serving the notice of motion; but the omission so to do does not constitute a good reason for setting aside the service of the notice of motion; the effect simply is, that relator cannot read affidavits or material not so filed in support of his motion.—*R. v. FLEMING* (1892), 14 P. R. 458.—CAN.

PART VII. SECT. 4, SUB-SECT. 4.—A.

2000 I. All material facts must be set forth.]—Where a party applying for a *quo warranto* improperly withheld material facts, which ought to have been stated in his affidavit, the rule was discharged with costs.—*Ex p. GILBERT* (1873), 1 Pug. 231.—CAN.

2000 II. —.]—The affidavit of the relator in support of the application for a *quo warranto* did not set out fully & in detail the prescribed facts & circumstances alleged in the statement:—*Held*: these were defects in the material necessary to found the application, not mere irregularities which could be amended at a later stage, & the fact, the writ, & all proceedings were set aside with costs.—

R. v. BILLINGS (1888), 12 P. R. 404.—CAN.

G. Statement of belief insufficient.]

—An affidavit of a person who said that he had reason to believe that resp., had never made the declaration of qualification, is insufficient.—*R. v. CALLOWAY* (1886), 3 Man. L. R. 297.—CAN.

H. —.]—*R. v. WOELLER* (1812), 21 O. W. R. 672; 3 D. L. R. 281.—CAN.

K. Who may take.]—Relator's attorney may act as commissioner to take the recognisance & affidavit.—*R. v. ROCHESTER* (1855), 13 U. C. R. 630.—CAN.

PART VII. SECT. 4, SUB-SECT. 4.—B.

2005 I. Relator—Sufficiency of.]—It is

Sect. 4.—The application: Sub-sect. 1, B. & C.

2008. — & persons estopped from being relators—Sufficiency of.]—*R. v. SYMMONS*, No. 1958, *ante*.

ante. *v. PARRY*, No. 1847,

2010. Person estopped from being relator—Motion by relator.]—The ct. will receive in support of an application for a *quo warranto*, the affidavit of a person who is himself estopped from being a relator, if the motion is made by a relator properly qualified, although the complete ground of the application appears only from the affidavit of the party estopped.—*R. v. BRAME* (1836), 4 Ad. & El. 664; 111 E. R. 937.

2011. — Whether admissible.]—Where one, with a view to preserve peace, has been party to an arrangement for the election of another to a municipal office, the ct. will not allow him, as relator, afterwards to question that election on *quo warranto*.

Qu.: whether he will be permitted, as a mere deponent, to make affidavit in support of such application.—*R. v. JONES* (1837), as reported in Will. Woll. & Dav. 673; 1 Jur. 819.

Annotation: *Mentd.* *R. v. Roberts* (1838), 7 Ad. & El. 433.

C. Sufficiency.

2012. Election to office—Information & belief sufficient—Where no denial by defendant.]—Where sufficient appears by the affidavits to draw the merits of an election to a corporate office into question, the ct. will grant an information in the nature of a *quo warranto* though the fact of deft.'s usurpation does not appear otherwise than by the deponent's swearing, to their information & belief, that deft. was admitted a freeman & sworn & enrolled accordingly. & deft. does not deny the fact when called on by the rule to show cause.—*R. v. HARWOOD* (1802), 2 East, 177; 102 E. R. 336.

Annotations:—*Consd.* *R. v. Slatter* (1810), 3 Per. & Dav. 263. *Fold.* *R. v. Slythe* (1827), 6 B. & C. 240; *R. v. Lane*, *R. v. Cobbold* (1827), 9 Dow. & Ry. K. B. 185, n. *Mentd.* *R. v. Ledgard* (1838), 3 Nev. & P. K. B. 513.

2013. — Under particular charter.]—Upon an application for a *quo warranto* information, suggesting that defts. were elected contrary to the provisions of a particular charter, the affidavit must state that the charter was accepted, or that the usage had been in conformity to the charter. The ct. after determining that the affidavit was ill for omitting so to state, refused leave to amend it.—*R. v. BARZEY* (1815), 4 M. & S. 253; 105 E. R. 828.

2014. — Disqualification of electors.]—A *quo warranto* information was moved for against an officer elected by ballot, on the ground that a large proportion of the persons who voted were not qualified; but it was not shown for whom the votes of those persons were given:—*Held*: on this application the officer could not be required to prove his election valid, but it lay on the opposing parties to show, if that were practicable, that his majority was obtained by bad votes.—*R. v. JEFFERSON* (1833), 5 B. & Ad. 855; 2 Nev. & M. K. B. 487; 110 E. R. 1007.

2015. — Objection to defendant's title.]—In the rule *nisi* for a *quo warranto* information it is not enough, under the rule of Hilary Term 1827 to

state that the party against whom the application is made was not entitled to be appointed to the office & that the relator was.—*R. v. EDYE* (1848), 12 Q. B. 936; 12 L. T. O. S. 192; 13 Jur. 8; 12 J. P. Jo. 787; 116 E. R. 1121; *sub nom.* *R. v. EDYE*, *Re BISHOP*, 18 L. J. Q. B. 6.

2016. Acceptance of office—Incompatible offices—Valid appointment must be shown.]—Where a rule is obtained for a *quo warranto*, upon the ground that a party has vacated a corporate office by having accepted a second incompatible office, the affidavits must show a valid appointment to the second office, the acceptance of which is made the ground of a motion.—*R. v. DAY* (1829), 9 B. & C. 702; 2 Man. & Ry. M. C. 391; 7 L. J. O. S. K. B. 308; 109 E. R. 261.

2017. — Acts constituting acceptance must be deposed.]—*R. v. SLATTER*, No. 1882, *ante*.

2019. — Statement of.]—*R. v. QUAYLE*, No. 1954, *ante*.

See, also, Nos. 1847, 1958, 2005–2009, *ante*.

As to impeaching title of electors, *see* Nos. 1911–1915, *ante*.

SECT. 5.—PRACTICE AND PROCEDURE.

2020. Change of venue—Power of court to grant.]—In an information in the nature of *quo warranto*, there was, after issue joined, a suggestion entered on the record, that the trial of the issue might be more conveniently had in M. than in L. Deft. appeared at the trial in M.:—*Held*: for the purpose of securing a fair trial, the ct. has an inherent power to change the venue.—*CLERK v. R.* (1861), 9 H. L. Cas. 184; 31 L. J. Q. B. 175; 5 L. T. 66; 11 E. R. 699, H. L.; *affg.* *S. C. sub nom.* *CLARK v. R.* (1860), 3 E. & E. 147, Ex. Ch. *Annotation*:—*Refd.* *R. v. Patent-Eureka Manure Co.* (1865), 30 J. P. 86.

2021. Consolidation—Where informations against several defendants.]—*R. v. BEDFORD (DUKE)* (1729), 1 Barn. K. B. 242; 94 E. R. 165; *subsequent proceedings*, 1 Barn. K. B. 280.

Annotations:—*Refd.* *R. v. Weeks* (1733), Kel. W. 290; *R. v. Attwood* (1833), 4 B. & Ad. 481. *Mentd.* *R. v. Courtenay* (1808), 9 East, 246; *Darley v. R.* (1846), 12 Cl. & Fin. 620.

2022. — —.]—*R. v. FOSTER* (1758), 1 Burr. 573; 97 E. R. 454.

2023. — —.]—*R. v. WARLOW*, No. 1903, *ante*.

2024. — —.]—*R. v. ABSOLON* (1847), 11 J. P. Jo. 903.

Annotation:—*Refd.* *R. v. Caudwell* (1848), 12 J. P. Jo. 134.

2025. Enlargement of rule—When granted—General rule.]—When a rule is made to show cause why an information in the nature of a *quo warranto* should not be granted, & that rule is moved to be enlarged, the ct. will enlarge it if the party consent to plead as well as to appear within the same time as he would be obliged to do if the rule had been made absolute directly.—*ANON.* (1733), 2 Barn. K. B. 340; 94 E. R. 540.

2026. — —.]—Defence prejudiced through delay in service.]—Where a rule to show cause why an information in the nature of a *quo warranto* should not issue has not been served in time to enable deft. to prepare to show cause such rule

PART VII. SECT. 5.

2021 i. Consolidation—Where informations against several defendants.]—When the grounds of complaint are the same as to all, one writ of *quo warranto* may issue against several

municipal councillors.—*OLIVIER v. ROGER* (1917), Q. R. 53 S. C. 136.—*CAN.*

2025 i. Enlargement of rule—When granted.]—Under Municipal Act, 1913, s. 165, the time can be extended for

the service of notice of *quo warranto* proceedings, without any actual evasion of service by the party to be served being proven.—*BAND v. McVEITY* (1914), 26 O. W. R. 102; 6 O. W. N. 105; 16 D. L. R. 874.—*CAN.*

will be enlarged.—*R. v. DUNN* (1846), 10 J. P. Jo. 724.

2027. Form of rule nisi—Sufficiency of—Objections to defendant's title.]—*R. v. PREECE*, No. 1987, ante.

2028. — — — — —.]—*R. v. EDYE*, No. 2015, ante.

2029. — — — — —.]—The rule of Hilary Term 1827 that the objections intended to be made to the title of a person against whom an information in the nature of a *quo warranto* is to be filed, shall be specified in the rule to show cause, is a rule applicable to the pleadings only, & does not prevent the relator at the trial of the information from going into objections which may not be specified in the rule.—*R. v. TUGWELL* (1868), L. R. 3 Q. B. 704; 9 B. & S. 367; 38 L. J. Q. B. 12; 33 J. P. 101.

Annotations:—Mentd. *R. v. Plenty* (1869), L. R. 4 Q. B. 346; *R. v. Harrold* (1873), L. R. 8 Q. B. 418; *Mather v. Brown* (1876), 24 W. R. 736; *Stepney Petn.* (1886), 4 O.M. & H. 34.

2030. Defence—"Non usurpavit" insufficient.]—Nobody ever thought that *non usurpavit* was a good plea, & the reason why it is not, evidently appears from the nature of the charge, which is for him "to show, by what warrant or authority, etc." to which that plea is no answer, & if this could not have been pleaded in bar, then most certainly that replication, which in effect sets up that plea again, must be naught. If *non usurpavit* were a general issue allowed in this case, all the rest of the pleadings would be to no other purpose but to lengthen the record (*PARKER, C.J.*).—*R. v. BLAGDEN* (1715), 10 Mod. Rep. 296; *Gilb.* 6, 145; 88 E. R. 736.

Annotation:—Refd. *R. v. Tate* (1803), 4 East, 337.

2031. — Sufficiency of title.]—A *quo warranto* lies for holding a ct. baron, to which if the party plead, & entitle himself to a manor, he need not show title to hold the ct., for that is incident to the manor.—*R. v. STANTON* (1610), Cro. Jac. 259; 79 E. R. 223; *sub nom.* *R. v. STAFFERTON*, 1 Bulst. 54; *Yelv.* 191.

Annotation:—Mentd. *R. v. London Corpn.* (1691), 12 Mod. Rep. 17.

2032. — Defendant must show title.]—If deft. in a *quo warranto* fails to prove a title, there must be judgment for the Crown.—*R. v. LEIGH* (1768), 4 Burr. 2143; 98 E. R. 117.

2033. — Effect of setting up defective title.]—Where deft. sets out a bad title to the office the ct. will give judgment on the plea, as importing a confession of the usurpation.—*R. v. PHILLIPS* (1720), 1 Stra. 394; 93 E. R. 588.

Annotations:—Refd. *R. v. Ellames* (1734), 2 Stra. 976; *R. v. Phillips* (1757), 1 Burr. 292; *Gwynne v. Burnell* (1840), 6 Bing. N. C. 453.

2034. — Defendant cannot plead & demur.]—*Semble:* In *quo warranto* deft. cannot plead & demur to the information.—*R. v. RUSSELL* (1869), 10 B. & S. 91; 19 L. T. 686; 17 W. R. 402; 33 J. P. Jo. 69.

2035. — To second information—After judgment of ouster.]—Upon an information in the nature of *quo warranto* against one for claiming the office of alderman, if he disclaims, & judgment of ouster is given against him, he is concluded from showing to a second information for exercising the same office that he was duly elected before such first information & judgment of ouster, & that he was afterwards sworn in by virtue of a

peremptory *mandamus* from this ct.—*R. v. CLARKE* (1801), 2 East, 75; 102 E. R. 297.

Annotation:—Refd. *R. v. Marshland Smith & Fen District Comrs.*, [1920] 1 K. B. 155.

2036. — Amendment of.]—In *quo warranto* after plea pleaded deft. can amend his plea on paying costs before joinder in demurrer but not after demurrer joined.—*A.-G. v. TRINITY HOUSE* (1661), 1 Sid. 54; 82 E. R. 966.

2037. — — — — —.]—A plea in *quo warranto* is allowed to be amended after demurrer, & cause set down for argument.—*R. v. ELLAMES* (1734), 2 Barn. K. B. 445; *Cunn.* 39; *Lee temp. Hard.* 42; 2 Stra. 976; 7 Mod. Rep. 220, 223; *Ridg. temp. H.* 82, 87; 94 E. R. 609.

Annotations:—Consd. *R. v. Grampound Corpn.* (1798), 7 Term Rep. 699. *Refd.* *Mestaer v. Hertz* (1815), 3 M. & S. 450. *Mentd.* *R. v. St. Mary-on-the-Hill, Chester* (1798), 7 Term Rep. 735.

2038. — — — — —.]—Deft. in *quo warranto* may upon terms change the point of his defence.—*R. v. GRIMES* (1768), 4 Burr. 2147; 98 E. R. 119.

2039. Reply—Crown may traverse plea & demur.]—In an information in the nature of a *quo warranto* the Crown may reply several matters; also may traverse the allegations in the plea & demur.—*R. v. DIPLOCK* (1868), 10 B. & S. 174; 19 L. T. 380.

2040. Evidence—Limitation of evidence—To objections on record.]—*Semble:* it is not competent, on the trial of an information of *quo warranto* against the elected, to impeach by evidence the titles of the electors, unless they are specially questioned on the record.—*R. v. SMITH* (1810), 5 M. & S. 271; 105 E. R. 1050.

Annotation:—Consd. *R. v. Hughes* (1825), 4 B. & C. 368.

2041. — — — — —.]—Deft. in a *quo warranto* is a competent witness to prove his qualification.

Semble: the general rule that the party objecting in *quo warranto* proceedings shall be confined to the objections taken in his rule nisi, only extends to the pleadings, & does not limit the objections on the evidence.—*R. v. CROSS* (1852), 19 L. T. O. S. 35; 18 J. P. 214.

Annotation:—Consd. *R. v. Collins* (1876), 2 Q. B. D. 30.

2042. — Burden of proof—Making declaration—Municipal Corporations Act, 1835 (c. 76), s. 35—Rural District Councils Election Order, 1898.]—It is necessary, on an application for a rule for a *quo warranto* information against a person appointed clerk to a council or board, for appct., if he relies upon the fact, to prove that the members who voted for the person appointed had not duly made the declaration required by sect. 38 of the above Act, as applied to rural district councillors by the above order, & the onus is not upon the person appointed to prove that they had made such declarations.—*R. v. HUNTON, Ex p. HODGSON* (1911), 75 J. P. 335; 9 L. G. R. 751, D. C.

Effect of judgment of ouster.]—*See* No. 2035, ante, Nos. 2049–2053, post.

2043. The trial—Order of procedure—Where separate informations—Against electors & elected.]—If two informations in the nature of *quo warranto* be filed, the first against the mayor *de facto*, & another against a burgess who voted for him, the second information shall be first tried.—*R. v. PENRYN CORPN.* (1724), 8 Mod. Rep. 215; 88 E. R. 155.

2044. — — — — —.]—ANON. (1732), 2 Barn. K. B. 219; 94 E. R. 460.

2027 1. Form of the rule nisi—Sufficiency of.]—It is a fatal objection to a rule nisi for a *quo warranto* that no grounds are set out.—*Re BOWER*

(1881), 2 R. & G. 319.—CAN.

2027 II. — — — — —.]—*Re HOWE ESTATE* (1881), 2 C. L. T. 95.—CAN.

1. Evidence—Utmost strictness of

*proof necessary.]—*On an application for *quo warranto* the utmost strictness of proof is required.—*R. v. CALLOWAY* (1886), 3 Man. L. R. 297.—CAN.

Sect. 5.—Practice and procedure. Sect. 6: Sub-sects. 1 & 2.]

2045. — The right to begin.]—On the trial of *quo warranto* informations, if the affirmative of the issues is on deft. he begins, but if it is on the relator, he does.—*R. v. YEATES* (1824), 1 Q. & P. 323, N. P.

2046. — Several cases on one information—To be treated as a whole.]—In trying a *quo warranto* information against a councillor on the ground that he had not a majority of votes if it is intended that more than one of the defeated candidates should be set up, all the cases should be opened by prosecutor's counsel at the outset, "the judge may properly refuse to let him afterwards start a new case after failing with the first.—*R. v. BRADLEY* (1861), 3 E. & E. 634; 30 L. J. Q. B. 180; 3 L. T. 853; 25 J. P. 197; 7 Jur. N. S. 757; 9 W. R. 372; 121 E. R. 580.

*Annotations:—*Consd. *R. v. Plenty* (1869), L. R. 4 Q. B. 346; *Henry v. Armitage* (1883), 12 Q. B. D. 257. *Refd.* *Mather v. Brown* (1876), 1 C. P. D. 596.

2047. Judgment—Amendment of—Evidence of intention.]—If in ingrossing the entry of judgment in *quo warranto* upon a disclaimer the date of the patent be omitted by the negligence of the clerk, it may be amended by the paper book, & hearing evidence as to the intention of the parties.—*TUFTON & ASHLEY'S CASE* (1628), Cro. Car. 144; 79 E. R. 727.

*Annotations:—*Consd. *R. v. Tuchin* (1704), 2 Ld. Raym. 1061. *Refd.* *Smith v. Bowen* (1709), 11 Mod. Rep. 230; *Hatton v. Walker* (1729), 1 Barn. K. B. 213.

2048. — When final—Not against Crown.]—The judgment in an information in the nature of *quo warranto* if against deft. is final, but not if against the King (*HOLT, C.J.*).—*ANON.* (1698), 12 Mod. Rep. 224; 88 E. R. 1278.

2049. — Of ouster—Where defendant duly elected—But not sworn.]—In *quo warranto*, if deft. be found duly elected but not sworn into his office judgment of ouster shall be given.—*R. v. PINDAR* (1725), 8 Mod. Rep. 234; cited in 2 Ld. Raym. at p. 1447; 88 E. R. 168; *sub nom.* *PENRYN CORPN. CASE*, 1 Stra. 582, H. L.

*Annotations:—*Consd. *R. v. Castle* (1737), Andr. 119; *R. v. Cockerell* (1738), Andr. 260.

2050. — Defendant not within provisions of 9 Ann., c. 20, s. 5.]—*R. v. PONSONBY*, No. 1890, *ante*.

2051. — Form—Where confession as to part of information.]—In a general judgment upon motion to set aside a judgment of ouster upon an information in nature of a *quo warranto* for usurping the office of capital burgess from Aug. 20, 1732, to the time of filing the information. Deft. in his plea admitted usurpation from Aug. 20, 1732, to Sept. 29, following. He was then elected & sworn in a capital burgess. Upon this confession judgment of ouster was entered generally for the whole time laid in the information:—*Held*: judgment ought not to be entered generally, for the confession was only to a time past, & did not extend to the present execution of the office.—*R. v. TAYLOR* (1733), Kel. W. 272; 2 Barn. K. B. 320; 25 E. R. 609; *sub nom.* *R. v. BIDDLE & TAYLOR*, 2 Stra. 952.

*Annotation:—*Refd. *R. v. Clarke* (1801), 2 East, 75.

*m. Quashing proceedings—Whether power to set aside—After issue of writ.]—*A writ of *quo warranto* having been issued & served, the judge had not power to set it aside.—*R. v. COLEMAN* (1882), 7 A. R. 619.—*CAN.*

*n. — — — — —.]—**R. v. COULTER* (1902), 22 C. L. T. 414; 4 O. L. R. 520; 1 O. W. R. 636.—*CAN.*

*o. — — — — —.]—*A judge has power to set aside writ of *quo warranto*

when issued on his fiat.—*R. v. LEWIS* (1881), 8 P. R. 497.—*CAN.*

*p. Filing papers — Date of.]—*A judge issued his fiat for a *quo warranto* & the papers remained with him, but were handed to deft.'s solr., before the return day, for perusal:—*Held*: it was not necessary that they should have been filed with the deputy clerk of the Crown before the summons issued.—*R. v. ROCHESTER* (1855), 12 U. C. R. 630.—*CAN.*

2052. — Effect of—Upon subsequent information—Against third party.]—In *quo warranto* against a bailiff of a corpn. he pleads a nomination by A. & B. two bailiffs thereof. Upon the issue taken on their being bailiffs, a judgment of ouster in a *quo warranto* against them is admissible, but not conclusive, evidence.—*R. v. HEDDEN* (1738), Andr. 388; 2 Stra. 1109; 95 E. R. 447.

*Annotation:—*Expld. *R. v. Hughes* (1825), 4 B. & C. 368.

2053. — — — — — Against same party.]—*R. v. CLARKE*, No. 2035, *ante*.

See, also, Nos. 1828–1831, *ante*.

2054. New trial—Effect of delay—In application.]—New trial in *quo warranto* refused, the motion being made three years after the trial, & no reason assigned why application was not made sooner.—*R. v. BELL* (1734), 2 Stra. 995; Cunn. 113; 93 E. R. 991.

2055. — Whether granted—After acquittal.]—A new trial cannot be had after an acquittal upon an information in the nature of a *quo warranto*.—*R. v. BLUNT* (1753), Say. 102; 96 E. R. 817.

2056. — — — — — Verdict against weight of evidence.]—A new trial was granted in *quo warranto* where the jury had found a general verdict for the King, which as to two of the issues was against the evidence.—*R. v. COCKERELL* (1738), Andr. 260; 95 E. R. 389.

2057. — — — — —.]—*R. v. FRANCIS*, No. 1825, *ante*.

2058. Effect of demise of the Crown.]—Proceedings on an information in the nature of a *quo warranto* are not abated by the demise of the Crown.—*R. v. POWELL* (1727), 2 Stra. 782; 93 E. R. 845; *on appeal, sub nom.* *POWELL v. R.* (1728), 2 Bro. Parl. Cas. 298, H. L.

*Annotations:—*Mentd. *R. v. Wynn* (1733), 2 Barn. K. B. 390; *R. v. Grosvenor* (1733), Kel. W. 281; *R. v. Tomlyn* (1736), Lee temp. Hard. 316; *R. v. Harman* (1740), 7 Mod. Rep. 402; *R. v. Westwood* (1825), 4 B. & C. 781.

2059. Inspection of documents.]—In *quo warranto* a rule will be granted to inspect the charter & books.—*R. v. HOLLISTER* (1736), Lee temp. Hard. 245; 95 E. R. 157.

2060. Quashing proceedings.]—*Quo warranto* cannot be quashed on motion though the parties consent.—*R. v. EDGAR* (1769), 4 Burr. 2297; 98 E. R. 198.

2061. Stay of proceedings—On application of one of several defendants where similar informations pending.]—Several *quo warranto* informations having been filed on the same grounds, for exercising the office of alderman of the same corpn. one was tried, a verdict found for the Crown, & a rule nisi granted for a new trial, or to enter a verdict for deft. A rule nisi was then obtained for a stay of proceedings in the other informations pending the above application. The ct. discharged the rule, the prosecutor undertaking to proceed with only one other information till further order; but they refused to direct that either party should be bound by the result of such one proceeding.—*R. v. COUSINS* (1837), 7 Ad. & El. 285; 6 Dowl. 3; 2 Nev. & P. K. B. 164; Will. Woll. & Dav. 464; 1 J. P. 310; 112 E. R. 479.

*q. Whether appeal lies.]—**WALSH v. HEFFERMAN* (1887), 14 S. C. R. 738.—*CAN.*

*r. Mode of procedure.]—*A motion for an information in the nature of a *quo warranto* is properly taken before a single judge in ct., by way of motion upon notice.—*R. v. NAGLE* (1894), 24 O. R. 507.—*CAN.*

*s. — — — — —.]—*A motion for leave to file an information by way of *quo*

2062. Proceedings in error—Common Law Procedure Act, 1852 (c. 76).—The provisions respecting error in the above Act, do not apply to informations in the nature of *quo warranto*.—*R. v. SEALE* (1855), 5 E. & B. 1; 24 L. J. Q. B. 221; 25 L. T. O. S. 96; 19 J. P. 645; 1 Jur. N. S. 593; 3 W. R. 414; 3 C. L. R. 1251; 119 E. R. 382.
*Annotations:—*Reid. *Solomon v. Graham* (1856), 27 L. T. O. S. 102. *Mentd. R. v. Spratley* (1856), 20 J. P. 628.

Appearance by corporation.]—See CORPORATIONS, Vol. XIII., p. 421, Nos. 1412–1420.

Return to quo warranto by corporation.]—See CORPORATIONS, Vol. XIII., p. 421, No. 1410.

SECT. 6.—COSTS.

SUB-SECT. 1.—IN GENERAL.

2063. Whether relator entitled to—On obtaining judgment.]—*R. v. AMERY* (1793), 1 Anst. 178; 145 E. R. 837, H. L.

*Annotations:—*Mentd. *Re Robinson* (1837), 6 L. J. Ex. 158; *Pollitt v. Forrest* (1847), 11 Q. B. 962.

2064. — Costs of prosecution—& unsuccessful interlocutory motion.]—*R. v. DUDLEY* (1840), 4 Jur. 915.

2065. — On writ of error.]—ROWLEY *v. R.* (1845), 6 Q. B. 668; 14 L. J. Q. B. 240; 9 Jur. 432; 115 E. R. 252; *sub nom. R. v. ROWLEY*, 5 L. T. O. S. 132, Ex. Ch.

2066. — Costs on all issues—Where successful on one.]—*R. v. DOWNES* (1786), 1 Term Rep. 453; 99 E. R. 1193.

2067. Liability of relator for—Dismissal of groundless application.]—*R. v. CARPENTER* (1736), 2 Stra. 1039; 93 E. R. 1018.

2068. —.]—*R. v. LEWIS* (1759), 2 Burr. 780; 2 Keny. 497; 97 E. R. 559.

*Annotations:—*Folld. *R. v. Wardroper* (1766), 4 Burr. 1963. *Reid. R. v. Wardroper* (1767), 4 Burr. 2024. *Mentd. R. v. Binsted* (1774), 1 Cowp. 75.

2069. —.]—*R. v. WARDROPER* (1766), 4 Burr. 1963; 98 E. R. 23.

*Annotations:—*Mentd. *R. v. Dicken* (1791), 4 Term Rep. 282; *R. v. Archdall* (1838), 2 J. P. 486.

2070. — Though application abandoned—Before hearing.]—BALLARD *v. HALLIWELL* (1896), 65 L. J. Q. B. 332; 40 Sol. Jo. 316, D. C.

2071. Liability of third party promoting application—Nominal relator indigent.]—*R. v. GREENE* (1843), 4 Q. B. 646; 3 Gal. & Dav. 612; 12 L. J. Q. B. 239; 1 L. T. O. S. 167; 7 Jur. 440; 114 E. R. 1042.

*Annotations:—*Consd. *R. v. Davey* (1850), 14 J. P. Jo. 781. *Reid. R. v. Dunn* (1844), 5 Q. B. 959.

2072. —.]—*R. v. DAVEY* (1850), 16 L. T. O. S. 175, 194; 14 J. P. Jo. 769, 781.

2073. — Abandonment of proceedings by nominal relator.]—*R. v. MELCOMBE REGIS BURIAL BOARD* (1854), 23 L. T. O. S. 92; 18 J. P. Jo. 326.

2074. On disclaimer or resignation—Before rule nisi obtained—Discretion of court—To allow dis-

claimer without costs.]—*R. v. HOLT* (1818), 2 Ohit. 366.

*Annotation:—*Consd. *R. v. Morton* (1843), 4 Q. B. 146.

2075. —.]—*R. v. BLIZARD*, No. 1902, ante.

2076. — Where defendant free from blame—Relator not entitled to.]—*R. v. MAY* (1851), 2 L. M. & P. 144; 20 L. J. Q. B. 268; 15 Jur. 129.

*Annotations:—*Expld. *R. v. Sidney* (1851), 2 L. M. & P. 149. *Consd. R. v. Hartley* (1854), 22 L. T. O. S. 221.

2077. — After rule nisi obtained.]—*R. v. MORTON* (1843), 4 Q. B. 146; 3 Gal. & Dav. 400; 114 E. R. 853; *sub nom. R. v. MORETON*, 12 L. J. Q. B. 123; 7 Jur. 85.

*Annotations:—*Folld. *R. v. May* (1851), 2 L. M. & P. 144. *Distd. R. v. Sidney* (1851), 2 L. M. & P. 149. *Consd. R. v. Hartley* (1854), 3 E. & B. 143. *Distd. R. v. Blizard* (1866), L. R. 2 Q. B. 55; *R. v. Newcombe* (1866), 15 W. R. 108. *Mentd. R. v. Tugwell* (1868), L. R. 3 Q. B. 704.

2078. — Defendant liable for—Where candidate for office.]—*R. v. SIDNEY* (1851), 2 L. M. & P. 149; 20 L. J. Q. B. 269.

*Annotations:—*Consd. *R. v. Earnshaw* (1853), 22 L. J. Q. B. 174. *Distd. R. v. Blizard* (1866), L. R. 2 Q. B. 55. *Reid. R. v. Hartley* (1854), 3 E. & B. 143.

2079. — Rule made absolute by consent—Without imposing terms on relator.]—*R. v. EARNSHAW* (1853), 22 L. J. Q. B. 174; 20 L. T. O. S. 235.

*Annotation:—*Reid. *R. v. Hartley* (1854), 3 E. & B. 143.

2080. —.]—*R. v. HARTLEY* (1854), 3 E. & B. 143; 22 L. T. O. S. 221; 18 Jur. 623; 2 W. R. 159; 18 J. P. Jo. 52; 118 E. R. 1094.

*Annotation:—*Distd. *R. v. Blizard* (1866), L. R. 2 Q. B. 55.

2081. — Rule absolute without costs.]—*R. v. NEWCOMBE*, No. 1904, ante.

SUB-SECT. 2.—UNDER STATUTE.

2082. 9 Ann., c. 20—Not against defendant—Judgment of ouster affirmed on appeal.]—PENDER *v. R.* (1725), 2 Bro. Parl. Cas. 294; 1 E. R. 953, H. L.

*Annotation:—*Mentd. *A.-G. v. Allgood* (1743), Park. 1.

2083. — Given only where usurpation of corporate office—Or freedoms in corporations.]—*R. v. WILLIAMS*, No. 1931, ante.

2084. — Within corporate places.]—*R. v. WALLIS* (1793), 5 Term Rep. 375; 101 E. R. 210.

*Annotations:—*Appld. *R. v. Hall* (1823), 1 B. & C. 237; *R. v. M'Kay* (1826), 5 B. & C. 640. *Reid. R. v. Grimshaw* (1847), 11 J. P. Jo. 855; *Lloyd v. R.* (1862), 2 B. & S. 656; *R. v. Backhouse* (1867), 7 B. & S. 911. *Mentd. R. v. Richardson* (1808), 9 East, 469.

2085. —.]—LLOYD *v. R.* (1862), 2 B. & S. 656; 31 L. J. Q. B. 209; 6 L. T. 610; 26 J. P. 789; 121 E. R. 1215; *sub nom. R. v. LLOYD*, 10 W. R. 625, Ex. Ch.

2086. —.]—*R. v. M'KAY* (1826),

warranto is properly made by notice of motion, not by rule nisi.—*R. v. QUEENEL* (1909), 11 W. L. R. 96; 19 Man. L. R. 23.—CAN.

PART VII. SECT. 6, SUB-SECT. 1.

t. Liability of relator for—Through improperly withholding material facts.]

—Where a party applying for a *quo warranto* improperly withheld material facts, which ought to have been stated in his affidavit, the rule was discharged with costs.—*Ex p. GILBERT* (1873), 1 Pug. 231.—CAN.

a. — Where order in discretion of court.]—As the granting of an order for a *quo warranto* is in the discretion of the ct. & the term of deft.'s office

would expire before the issue could be tried, a motion should be dismissed without costs.—*R. v. EVANS* (1899), 31 O. R. 448.—CAN.

b. On disclaimer or resignation—Before rule nisi—Respondent willing to sign any necessary documents—Costs will be limited.]—Where resp. disclaims & is willing to sign any necessary documents costs will be limited as far as possible, though relator is compelled to come to ct.—*R. v. BRAGO, Ex p. SMITH*, [1911] S. R. Q. 188.—AUS.

c. — Relator allowed costs.]—*R. v. LAMONT, R. v. STREET* (1896), 3 Torr. L. R. 371.—CAN.

d. — Before rule nisi served—Rule absolute without costs.]—Where a *quo warranto* for usurpation of an office has been obtained, & deft. before the rule is served upon him, resigns the office, the rule will be made absolute, but without costs.—*R. v. COLCLOUGH* (1882), 1 N. Z. L. R. 129.—N.Z.

2077 i. — After rule nisi obtained—Entitled to costs of appearing.]—A town comr., who has been served with the conditional order for a *quo warranto*, but disclaims the office, is entitled to costs of appearing by counsel.—*R. v. BRADY* (1858), 7 L. C. L. R. 610.—IR.

Sect. 6.—Costs: Sub-sects. 2 & 3. Part VIII. Sect. 1.]

5 B. & C. 640; 8 Dow. & Ry. K. B. 393; 108 E. R. 238.

*Annotations:—*Consd. Lloyd v. R. (1862), 2 B. & S. 656; R. v. Backhouse (1867), 7 B. & S. 911.

2087. — What offices within statute—Not register & clerk of Court of Request.]—R. v. HALL (1823), 1 B. & C. 237; 2 Dow. & Ry. K. B. 341; 1 Dow. & Ry. M. C. 259; 1 L. J. O. S. K. B. 88; 107 E. R. 88.

*Annotations:—*Consd. R. v. M'Kay (1826), 5 B. & C. 640. *Refd.* R. v. Grimshaw (1847), 11 J. P. Jo. 855. *Mentd.* R. v. St. Martin's Grdms. (1851), 17 Q. B. 149.

2088. — Coroner for borough.]—R. v. GRIMSHAW (1847), 2 New Mag. Cas. 291; 2 Saund. & C. 146; 17 L. J. Q. B. 19; 10 L. T. O. S. 171; 12 Jur. 134; 11 J. P. Jo. 855.

2089. — Not member of local board of health.]—R. v. BACKHOUSE (1867), 7 B. & S. 911.

*Annotation:—*Folld. R. v. Morgan (1872), 26 L. T. 790.

2090. — — — — —.]—R. v. MORGAN (1872), 26 L. T. 790; 37 J. P. 165.

2091. 4 & 5 Will. & Mar., c. 18 (now repealed).]—R. v. POWELL (1717), 1 Stra. 33; R. v. HOWELL (1736), Lee temp. Hard. 247; R. v. HATTON (1831), 9 L. J. O. S. K. B. 283; R. v. MORGAN (1736), 2 Stra. 1042.

2092. Municipal Corporation (General) Act, 1837 (c. 78) (now repealed).]—R. v. JONES (1837),

7 Ad. & El. 430; R. v. HOOKER (1839), 9 Ad. & El. 680.

2093. Public Authorities Protection Act, 1893 (c. 61)—Not applicable to quo warranto proceedings—For purposes of costs.]—R. v. CARTER (1904), 68 J. P. 466, D. C.

*Annotation:—*Refd. Roberts v. Battersea Metropolitan Borough (1914), 110 L. T. 566.

SUB-SECT. 3.—SECURITY FOR COSTS.

2094. Necessity for.]—R. v. HERTFORD CORPN., No. 1830, ante.

2095. When ordered—Relator indigent.]—R. v. DIXON (1849), 12 L. T. O. S. 347; 13 J. P. Jo. 35; subsequent proceedings (1850), 15 Q. B. 33.

2096. — Not if corporator—No fraud suggested.]—R. v. WYNNE (1814), 2 M. & S. 346; 105 E. R. 410.

2097. — Not when defendant not aware of indigence—Before issue joined.]—R. v. DAY, R. v. PATTESON (1831), 1 Dowl. 32.

2098. — — — — —.]—R. v. DAVEY (1850), 16 L. T. O. S. 175, 194; 14 J. P. Jo. 769, 781.

2099. — Relators not bonâ fide applicants.]—R. v. DUDLEY (1839), 7 Dowl. 700.

2100. Fixing of time for giving security—Liability of relator for disobedience to order.]—R. v. PIPER (1852), 18 L. T. O. S. 255; 16 J. P. Jo. 102; previous proceedings, 15 J. P. Jo. 784.

Part VIII.—Prohibition.

SECT. 1.—NATURE OF THE WRIT.

2101. Whether grantable ex debito justitiæ.]—The granting of prohibitions is not a discretionary act, but they are grantable *ex debito justitiæ*.—WOODWARD v. BONITHAN (1661), T. Raym. 3; 83 E. R. 2.

*Annotations:—*Refd. Jackson v. Beaumont (1855), 19 J. P. 532; Martin v. Mackonochie (1879), 49 L. J. Q. B. 9.

2102. — (1) In the Common Bench, prohibitions are grantable ex debito justitiæ.

(2) Prohibition may be granted after appeal.—MORTON'S CASE (1661), 1 Sid. 65; 82 E. R. 972.

*Annotations:—*As to (1) Refd. Jackson v. Beaumont (1855), 19 J. P. 532; Martin v. Mackonochie (1878), 3 Q. B. D. 730.

2103. —.]—FORD v. WELDEN (1664), T. Raym. 91; 83 E. R. 50.

2104. —.]—ADMIRAL v. LINSTED (1664), 1 Sid. 178; 82 E. R. 1042.

2105. —.]—The cts. have a discretionary power of granting or refusing prohibitions.—CLAY v. SUDGRAVE (SNELGRAVE) (1700), Holt, K. B. 595; 1 Salk. 33; 1 Ld. Raym. 576; 12 Mod. Rep. 405; sub nom. DAY v. SNELGROVE, 1 Com. 74.

*Annotations:—*Dctd London Corpn. v. Cox (1867), L. R. 2 H. L. 239. The writ of prohibition at suit of a party is not, as it was thought to be by some eminent judges at the close of the seventeenth century (see Holt, C.J., in Clay v. Snelgrave), in the discretion of the ct. (WILLES, J.). *Refd.* Re The Charleieh (1873), 28 L. T. 190. *Mentd.* Hanson v. Royden (1867), 17 L. T. 214.

2106. — Question new or difficult.]—Where a case is new or difficult, prohibition lies *ex debito justitiæ*.—ST. JOHN'S CHAPEL OF EASE WITHIN THE PARISH OF ST. ANDREW'S, HOLBORN CASE (1730), Fitz-G. 158; 94 E. R. 699.

2107. — On excess or want of jurisdiction.]—Whenever a ct. usurps a jurisdiction that does not belong to it, a prohibition is grantable *ex debito justitiæ*, & for the very purpose of correcting such an usurpation, & preserving the subject cts. within their proper limits.—THE ATLAS (1827), 2 Hag. Adm. 48.

*Annotations:—*Mentd. Stainbank v. Fenning (1851), 11 C. B. 51; Stainbank v. Shepard (1853), 13 C. B. 418; Re The Royal Arch (1857), 30 L. T. O. S. 198; Law v. Wallerstein, The Grapeshot (1870), 22 L. T. 376; The James W. Elwell, [1921] P. 351.

2108. —.]—The writ of prohibition to restrain a judge of a county ct. from further proceeding in a matter over which he has no jurisdiction, is a writ of right.—JACKSON v. BEAUMONT (1855), 11 Exch. 300; 24 L. J. Ex. 301; 25 L. T. O. S. 185; 19 J. P. 532; 3 W. R. 521; 156 E. R. 844.

2109. — Apparent from proceedings.]—If any inferior ct. shall entertain a suit which appears, either from the libel or on the face of the proceedings, to be beyond its jurisdiction, the cts. have no discretion, but are bound to grant a prohibition. When called upon, we are bound to issue our writ of prohibition as soon as we are informed that an inferior ct. is going out of its jurisdiction, & at whatever stage of the proceeding that fact is brought before us, whether by the Crown or one of its subjects, we are bound to interpose (*per* CUR.).—BURDER v. VELEY (1840), 12 Ad. & El. 233; Arn. & H. 175; 4 Per. & Dav. 452; 9 L. J. Q. B. 267; 4 J. P. 379, 394; 4 Jur. 382; 113 E. R. 801; *affd.* sub nom. VELEY v. BURDER (1841), 12 Ad. & El. 265, Ex. Ch.

*Annotations:—*Refd. Cordy v. Bentley (1851), 15 Jur. 779;

PART VIII. SECT. 1.

*e. Extraordinary remedy.]—*The writ is an extraordinary remedy

strictly confined to cases where none other exists.—BASTIEN v. AMYOT (1906), Q. R. 15 K. B. 22.—CAN.

*f. Final—Not interlocutory.]—*An

order for a writ of prohibition is final, & not interlocutory.—BARKER v. MARKS (1888), 6 N. Z. L. R. 529.—N.Z.

Ex p. Story (1852), 8 Exch. 195; *White v. Steele* (1862), 12 O. B. N. S. 383; *London Corp'n. v. Cox* (1867), L. R. 2 H. L. 239; *Maacknochie v. Penzance* (1881), 6 App. Cas. 424. **Mentd.** *Scale v. Veley* (1841), 1 Notes of Cases 170; *Still v. Palfrey* (1841), 2 Curt. 902; *Varty v. Nunn* (1841), 2 Curt. 877; *R. v. Thomas* (1842), 3 Q. B. 589; *Steward v. Francis* (1843), 3 Curt. 209; *Veley v. Gosling* (1843), 3 Curt. 253; *Francis v. Steward* (1844), 5 Q. B. 984; *Gosling v. Veley* (1853), 4 H. L. Cas. 679; *Westerton v. Liddell*, *Beal v. Liddell* (1855), 4 W. R. 167; *R. v. Christchurch Overseers* (1857), 21 J. P. 134; *Rose v. Watson* (1894), 63 L. J. M. C. 108.

2110. ————— Effect of acquiescence.]—

Where total absence of jurisdiction appears on the face of the proceedings in an inferior ct., the ct. is bound to issue a prohibition, although appct. for the writ has consented to or acquiesced in the exercise of jurisdiction by the inferior ct.—*FARQUHARSON v. MORGAN*, [1894] 1 Q. B. 552; 63 L. J. Q. B. 474; 70 L. T. 152; 58 J. P. 495; 42 W. R. 306; 10 T. L. R. 240; 9 R. 202, C. A.

Annotations.—*Apld.* *Re Cundall & Vavasour* (1906), 95 L. T. 483. **Consd.** *Clarke v. Knowles*, [1918] 1 K. B. 128; *Simpson v. Crowle*, [1921] 3 K. B. 243; *Smythe v. Wiles*, [1921] 2 K. B. 66. **Refd.** *Lee v. Cohen* (1894), 71 L. T. 824; *Alderson v. Palliser*, [1901] 2 K. B. 833; *R. v. Tristram*, [1902] 1 K. B. 816; *R. v. Kensington Income Tax Comrs.*, *Ex p. Edmond de Polignac*, [1917] 1 K. B. 486.

2111. —————.]—Where, upon the face of the record itself, it is apparent that there is a total lack of jurisdiction, deft. may obtain a writ of prohibition, even though he may have acquiesced in the proceedings down to the time when he applies for the writ.—*CLARKE BROTHERS v. KNOWLES*, [1918] 1 K. B. 128; 87 L. J. K. B. 189; 118 L. T. 253, D. C.

Annotation.—**Mentd.** *Smythe v. Wiles*, [1921] 2 K. B. 66.

2112. ————— Not apparent from proceedings—Defect in knowledge of applicant—Objection not taken till after judgment.]—(1) Where an inferior ct. proceeds in a cause properly within its jurisdiction no prohibition can be awarded till the pleadings raise some issue which the ct. is incompetent to try, but where the foundation for the jurisdiction is itself defective a prohibition may be applied for at once.

Process had issued out of the Lord Mayor's Ct. against C. as garnishee, & he declared in prohibition, a plea which set up the custom of foreign attachment, but did not allege, & the fact did not warrant any allegation, that the original debt, or the debt alleged to be due from the garnishee to deft., arose within the City, or that any one of the parties to the suit was a citizen, or was resident within the City:—**Held**: the plea was insufficient to show the existence of jurisdiction & consequently the garnishee was at liberty in such a case to proceed in prohibition without first putting in a plea in the Lord Mayor's Ct. setting forth the facts which showed the want of jurisdiction.

Where the defect is not apparent & depends upon some fact in the knowledge of appct. which he had an opportunity of bringing forward in the ct. below, & he has thought proper without excuse to allow that ct. to proceed to judgment without setting up his objection & without moving for a prohibition in the first instance, considering that the writ though of right is not of course the ct. would decline to interpose except perhaps upon an irresistible case or an excuse for the delay such as disability, malpractice, or matter newly come to the knowledge of appct. (*WILLES, J.*).

(2) The application for total want of jurisdiction may be made either by the party or a stranger (*WILLES, J.*).

(3) In cases where there is jurisdiction over the subject matter prohibition will be granted for a denial or perversion of right in which case the prohibition is only *quousque* (*WILLES, J.*).—

LONDON CORPN. v. COX (1867), L. R. 2 H. L. 239; 36 L. J. Ex. 225; 16 W. R. 44, H. L.; *affg. S. C. sub nom. COX v. LONDON CORPN.* (1863), 2 H. & O. 401, Ex. Ch.; (1862), 1 H. & O. 338.

Annotations.—*As to* (1) **Consd.** *Jacobs v. Brett* (1875), L. R. 20 Eq. 1; *Worthington v. Jeffries* (1875), L. R. 10 C. P. 379; *Hawes v. Paveley* (1876), 1 C. P. D. 418. **Refd.** *Shea v. United Sick & Burial Soc. of St. Patrick* (1867), 17 L. T. 176; *Buecleuch v. Metropolitan Board of Works* (1870), L. R. 5 Exch. 221; *Chambers v. Green* (1875), L. R. 20 Eq. 552; *Wirth v. Austen* (1875), 32 L. T. 689; *Oram v. Brearey* (1877), 2 Ex. D. 346; *Serjeant v. Dale* (1877), 2 Q. B. D. 558; *Gombe v. De La Here* (1892), 22 Ch. D. 316; *Chadwick v. Ball* (1885), 14 Q. B. D. 856; *R. v. Newport (Salop) County Court Judge, Ashley v. Norris* (1887), 36 W. R. 476; *R. v. Rogers* (1887), 57 L. J. Q. B. 143; *Broad v. Perkins* (1888), 21 Q. B. D. 533; *Moore v. Gangee* (1890), 25 Q. B. D. 244; *Farquharson v. Morgan*, [1894] 1 Q. B. 552; *Watson v. Petts* (No. 2), [1899] 1 Q. B. 430; *Payne v. Hogg* (1900), 82 L. T. 584; *McIntosh v. Simpkins* (1901), 84 L. T. 21; *R. v. Tristram*, [1902] 1 K. B. 816; *Re Clifford & O'Sullivan*, [1921] 2 A. C. 570. *As to* (2) **Consd.** *Cooke v. Gill* (1873), L. R. 8 C. P. 107; *Chadwick v. Ball* (1885), 14 Q. B. D. 855. **Refd.** *Quartly v. Timmins* (1874), L. R. 9 C. P. 416; *Chambers v. Green* (1875), L. R. 20 Eq. 552; *Worthington v. Jeffries* (1875), L. R. 10 C. P. 379; *Bridge v. Branch* (1876), 1 C. P. D. 633; *Read v. Brown* (1888), 59 L. T. 605. **Generally.** **Mentd.** *Webster v. Webster* (1862), 8 Jur. N. S. 1047; *Morris v. Lantour* (1864), 3 New Rep. 475; *Frith v. Guppy* (1866), L. R. 2 C. P. 32; *Banque de Credit Commercial v. De Gas* (1871), L. R. 6 C. P. 142; *Byrne v. Guano Consignment Co., Weguelin, etc., Garnishees* (1872), 25 L. T. 935; *Appleford v. Judkins* (1878), 3 C. P. D. 489; *Atwood v. Sellar* (1879), 4 Q. B. D. 342; *London Corp'n. v. London Joint Stock Bank* (1881), 6 App. Cas. 393; *British South Africa Co. v. Companhia de Mocambique*, [1893] A. C. 602; *Falkingham v. Victorian Railways Commr.*, [1900] A. C. 452; *Re Cundall & Vavasour* (1906), 95 L. T. 483; *Norwich Corp'n. v. Norwich Electric Tram. Co.*, [1906] 2 K. B. 119; *Board v. Board*, [1919] A. C. 956.

2113. —————.]—A writ of prohibition to an inferior ct. that has exceeded its jurisdiction, though of right, is not of course, & where the objection to the jurisdiction is not apparent, & depends upon some fact in the knowledge of appct., & he does not take the objection till after judgment, without substantial excuse for the delay, the ct. will decline to interpose.—*BROAD v. PERKINS* (1888), 21 Q. B. D. 533; 57 L. J. Q. B. 638; 60 L. T. 8; 53 J. P. 39; 37 W. R. 44; 4 T. L. R. 775, C. A.

Annotations.—**Consd.** *Farquharson v. Morgan*, [1894] 1 Q. B. 552. **Mentd.** *R. v. Speyer*, *R. v. Cassel*, [1916] 1 K. B. 595.

2114. ————— Application by stranger or party.]

(1) Where a plaintiff was entered in the Lord Mayor's Ct. against the Queen of Portugal "as reigning sovereign & supreme head of the nation of Portugal" to recover a debt alleged to be due from the Portuguese Govt., & a foreign attachment had issued according to the custom of the City of London:—**Held**: (1) the ct. would make absolute a rule for a prohibition to restrain proceedings in the action & in the attachment.

(2) The same principle was applied to a case where a plaintiff was entered in the same ct. against the Queen of Spain not expressly as reigning sovereign & head of the Spanish nation, but where it appeared pltf.'s cause of action arose upon a Spanish Govt. bond purporting to have been issued under a decree of the cts. sanctioned by the Regent of Spain in the name of the Queen then a minor.

(3) The writ of prohibition may in such cases be granted on the application of deft. before she has appeared to the action in the Lord Mayor's Ct.; or on the application of the garnishee, either before or after he has pleaded nil debet.

(4) Where an inferior ct. has no jurisdiction to entertain a suit, it is not necessary to entitle a party to a prohibition that he should have there pleaded to the jurisdiction.

(5) The ct. is bound to grant a prohibition where a ct. has no jurisdiction, upon the application

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of a stranger as well as of a party to the proceeding.

(6) If we had entertained any doubt upon the subject we should have directed appct. to declare in prohibition, but being clearly of opinion that there is an excess of jurisdiction in the ct. below, of which he is entitled to complain before us, it is our duty simply to make the order absolute (LORD CAMPBELL, C.J.).—*WADSWORTH v. SPAIN* (QUEEN), *DE HABER v. PORTUGAL* (QUEEN) (1851), 17 Q. B. 171; 8 State Tr. N. S. 53; 20 L. J. Q. B. 488; 16 Jur. 164; 117 E. R. 1246; *sub nom.* *R. v. LONDON CORPN.*, *Re WADSWORTH v. SPAIN* (QUEEN), *Re DE HABER v. PORTUGAL* (QUEEN), 18 L. T. O. S. 39.

Annotations:—*As to* (1) *Consd.* *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239. *Refd.* *Frith v. Guppy* (1866), L. R. 2 C. P. 32; *The Charkieh* (1873), L. R. 4 A. & E. 59; *Cooke v. Gill* (1873), L. R. 8 C. P. 107; *Whinney v. Schmidt* (1873), L. R. 8 C. P. 118. *As to* (2) *Refd.* *Larivière v. Morgan* (1872), 7 Ch. App. 554, n.; *The Charkieh* (1873), L. R. 4 A. & E. 59; *Whinney v. Schmidt* (1873), L. R. 8 C. P. 118; *As to* (3) & (4) *Refd.* *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239. *As to* (5) *Refd.* *Cooke v. Gill* (1873), L. R. 8 C. P. 107; *Worthington v. Jeffries* (1875), L. R. 10 C. P. 379. *As to* (6) *Refd.* *Portsmouth & Part-ridge v. Inclosure Comrs.* (1861), 3 L. T. 779; *Cox v. London Corpn.* (1862), 32 L. J. Ex. 64; *Worthington v. Jeffries* (1875), L. R. 10 C. P. 379. *Generally, Mentd.* *Westoby v. Day* (1853), 2 E. & B. 605; *Gladstone v. Musurus Bey* (1862), 1 New Rep. 178; *Kingsford v. G. W. Ry.* (1864), 10 Jur. N. S. 804; *Larivière v. Morgan* (1872), 26 L. T. 859; *The Parlement Belge* (1880), 5 P. D. 197; *Mighell v. Johore* (Sultan), [1894] 1 Q. B. 149; *The Broadmayne*, [1916] P. 64.

2115. ————.]—A prohibition will not be issued by the Ct. of Q. B., on the application of a stranger, as a matter of right, but of discretion only. But a "party aggrieved" by an excess of jurisdiction on the part of another ct. may demand a prohibition *ex debito justitiæ*.—*FORSTER v. FORSTER & BERRIDGE* (1863), 4 B. & S. 187; 8 L. T. 661; 122 E. R. 430; *sub nom.* *FOSTER v. FOSTER & BERRIDGE*, *Ex p. BERRIDGE*, 2 New Rep. 353; 32 L. J. Q. B. 312; 10 Jur. N. S. 254; 11 W. R. 799.

Annotations:—*Consd.* *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239. *Appld.* *R. v. Twiss* (1869), L. R. 4 Q. B. 407. *Consd.* *R. v. Surrey JJ.* (1870), L. R. 5 Q. B. 466; *Worthington v. Jeffries* (1875), L. R. 10 C. P. 379. *Refd.* *Chambers v. Green* (1875), L. R. 20 Eq. 552; *R. v. Richmond* Confirming Authority, *Ex p. Howitt*, [1921] 1 K. B. 248.

2116. ————.]—*LONDON CORPN. v. COX*, No. 2112, *ante*.

2117. ————.]—*R. v. TWISS*, No. 2336, *post*.

2118. ————.]—Where a superior ct. is clearly of opinion, both with reference to the facts & the law, that an inferior ct. is exceeding its jurisdiction, it is bound to grant a writ of prohibition; whether appct. for the prohibition is deft. below or a stranger. In such a case, neither the smallness of the claim in the suit below nor delay on the part of appct. is a reason for refusing the writ.—*WORTHINGTON v. JEFFRIES* (1875), L. R. 10 C. P. 379; 44 L. J. C. P. 209; 32 L. T. 606; 23 W. R. 750.

Annotations:—*N.F.* *Chambers v. Green* (1875), L. R. 20 Eq. 552. *Expld.* *Ellis v. Fleming* (1876), 1 C. P. D. 237. *Refd.* *Wallace v. Allen* (1875), 32 L. T. 830; *Bridge v. Branch* (1876), 1 C. P. D. 635; *Oram v. Brearey* (1877), 2 Ex. D. 346; *Davis v. Flagstaff Mining Co.* (1878), 3 C. P. D. 228; *Chadwick v. Ball* (1885), 14 Q. B. D. 855; *Farquharson v. Morgan*, [1894] 1 Q. B. 552; *R. v. Speyer*, *R. v. Cassel*, [1916] 1 K. B. 595; *Smythe v. Wiles*, [1921]

. *R. v. London County JJ. & L. C. C.*,

2119. ————.]—*CHAMBERS v. GREEN*, No. 2337, *post*.

As to who may apply, *see* Sect. 8, sub-sect. 2, *post*.

2120. Not grantable as of course.]—*LONDON CORPN. v. COX*, No. 2112, *ante*.

2121. May be granted quousque—Where objection is to manner & form of proceeding—Not on merits.]—(1) A prohibition *quousque* is only proper when the objection is to the manner & form of proceeding in the inferior ct. only, & not on the merits.

(2) It is no bar to prohibition issuing that an appeal against the decision of the inferior ct. is pending.—*WHITE v. STEELE* (1862), 12 C. B. N. S. 383; 31 L. J. C. P. 265; 6 L. T. 686; 8 Jur. N. S. 1177; 142 E. R. 1191; *subsequent proceedings*, 13 C. B. N. S. 231.

Annotations:—*As to* (1) *Refd.* *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239. *Generally, Mentd.* *R. v. How* (1863), 33 L. J. M. C. 53; *Ripplin v. Bastin* (1868), L. R. 2 A. & E. 386.

2122. ———— Denial of right by inferior court.]—The Ecclesiastical Ct. will be prohibited *quousque* they grant a copy of the libel.—*ANON.* (1675), 1 Freem. K. B. 287; 89 E. R. 207.

2123. ————.]—A prohibition cannot be granted for the double count of denying copy of the libel & on the merits; but it may be granted, on the first count, *quousque*.—*TREIL v. EDWARDS* (1704), Holt, K. B. 529; 90 E. R. 1191; *sub nom.* *ANON.*, 6 Mod. Rep. 308.

Annotation:—*Consd.* *White v. Steel* (1862), 31 L. J. C. P. 265.

2124. ————.]—In case of a refusal by the Ecclesiastical Ct. to give a copy of the articles, prohibition shall go *quousque* it be given.—*ANON.* (1704), 2 Salk. 553; 91 E. R. 469.

2125. ————.]—*LONDON CORPN. v. COX*, No. 2112, *ante*.

SECT. 2.—ALTERNATIVE REMEDIES.

2126. General rule.]—*Re BOWEN*, No. 2186, *post*.

2127. Remedy by appeal—Matter within jurisdiction of inferior court—Prohibition will not lie.]—*BROWN v. POYNS* (1648), Sty. 147; 82 E. R. 599.

2128. ————.]—*DENABY MAIN COLLIERY CO. v. MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO.* (1880), 3 Ry. & Can. Tr. Cas. 426, C. A.

Annotations:—*Mentd.* *Central Wales & Carmarthen Junction Ry. & Mid Wales Ry. v. G. W. Ry., L. & N. W. Ry., Mid. Ry. & Pembroke & Tenby Ry.* (1882), 4 Ry. & Can. Tr. Cas. 110; *Broughton & Plas Power Coal Co. v. G. W. Ry.* (1883), 4 Ry. & Can. Tr. Cas. 191; *Rhymer Iron Co. v. Rhymer Ry.* (1888), 5 T. L. R. 102; *Pickering Phipps v. L. & N. W. Ry.* (1892), 66 L. T. 721; *Charrington Sells Dale v. Mid. Ry.* (1901), 11 Ry. & Can. Tr. Cas. 222.

2129. ————.]—Supposing no statute to intervene, the ecclesiastical cts. must have jurisdiction to determine questions of this nature [suspension *a beneficio*]; & if they have jurisdiction prohibition does not lie to them from the temporal cts. The remedy, if there be any error in judgment, is by an appeal (LORD SELBORNE, C.).

Prohibition is the common law proceeding by which any of the superior temporal cts. at Westminster, not the Q. B. only, are enabled to restrain, amongst others, the cts. ecclesiastical from acting in excess of their jurisdiction; but it does not enable the temporal ct. to act as a ct. of appeal

g. Not grantable as of course—Where right affected by party pleading.]—*Re JONES v. JULIAN* (1897), 28 O. R. 601.—CAN.

2121 l. May be granted quousque.]—

Where a ct. gives judgment for an amount beyond the jurisdiction of the ct., prohibition will be granted until he amends the judgment by striking out the excess.—*Re ELLIOTT v. BRETTE* (1892), 21 O. R. 595.—CAN.

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2127 l. Remedy by appeal—Matter within jurisdiction of inferior court—Prohibition will not lie.]—*BASTIEN v. AMOT* (1906), Q. R. 15 K. B. 22.—CAN.

from the ct. ecclesiastical, so as to correct any irregularity or even injustice which may have been done by the ecclesiastical ct., if done in the exercise of their jurisdiction (LORD BLACKBURN).—*MACKONOCHE v. PENZANCE* (LORD) (1881), 6 App. Cas. 424; 50 L. J. Q. B. 611; 44 L. T. 479; 45 J. P. 584; 29 W. R. 633, H. L.; *affg.* S. C. *sub nom.* *MARTIN v. MACKONOCHE* (1879), 4 Q. B. D. 697, C. A.

Annotations.—*Consd. R. v. Tristram*, [1901] 2 K. B. 141. *Reid. Combe v. De La Bere* (1882), 22 Ch. D. 316; *Noble v. Abler* (1886), 11 P. D. 158; *Re London Scottish Permanent Bldg. Soc.* (1893), 63 L. J. Q. B. 112; *Re Clifford & O'Sullivan*, [1921] 2 A. C. 570. *Mentd. Dale's Case*, *Enraght's Case* (1881), 6 Q. B. D. 376; *Green v. Pensance* (1881), 6 App. Cas. 657; *Enraght v. Pensance* (1882), 7 App. Cas. 240; *Martin v. Mackonochie* (1882), 7 P. D. 94; *R. v. Marylebone County Court Judge* (1883), 50 L. T. 97; *Collins v. Collins* (1884), 9 App. Cas. 206; *R. v. Dibdin*, [1910] P. 57.

2130. ————].—Under Public Health Act, 1875 (c. 55), s. 150, notice was given by an urban authority to the owner of premises fronting a street to pave part of it, & on his default the authority executed the work & their surveyor gave him notice of apportionment of the expenses for which the owner was liable, & demand was made upon him for the amount. Under sect. 288, he, deeming himself aggrieved by the "decision" of the authority, addressed a memorial by way of appeal to the Local Govt. Board, stating the grounds of his complaint. On a rule for prohibition to the Local Govt. Board:—*Held*: an appeal lay by memorial to the Local Govt. Board, & that no prohibition ought to be granted.

Where part only of a party's request for a prohibition proves to be well founded the ct. ought to limit the prohibition to such part (BRETT, L.J.).

Semble: prohibition will lie against the Local Govt. Board where they exceed the powers given them by statute.—*R. v. LOCAL GOVERNMENT BOARD* (1882), 10 Q. B. D. 309; 52 L. J. M. C. 4; 48 L. T. 173; 47 J. P. 228; 31 W. R. 72, C. A.

Annotations.—*Consd. Re Clifford & O'Sullivan*, [1921] 2 A. C. 570. *Reid. Ex p. Wake* (1883), 11 Q. B. D. 291; *R. v. Sheffield Recorder* (1883), 47 J. P. 504; *Eccles v. Wirral R. S. A.* (1886), 17 Q. B. D. 107; *Walthamstow L. B. v. Staines* (1891), 7 T. L. R. 448; *R. v. L. G. Board, Ex p. Street* (1907), 5 L. G. R. 844; *R. v. Kensington Income Tax Comrs., Ex p. Aramayo* (1915), 6 Tax. Cas. 613. *Mentd. R. v. L. G. Board, Ex p. Thorp* (1914), 84 L. J. K. B. 1184.

2131. ————].—Absence of evidence is not a ground of prohibition; it is ground for appeal (STEPHEN, J.).—*Re BERKSHIRE COUNTY COURT CASE* (1887), 4 T. L. R. 40, D. C.

2132. ————].—Where an English co. was chargeable to income tax, the comms., for the purpose of the assessment of the co., in respect of their profits, drew inferences of fact that the profits of an American co. trading in the United States were the profits of the English co. The English co. applied for a writ of prohibition to the comms. to prohibit them from assessing that co. in respect of the profits of the American co.:—*Held*: the comms. having jurisdiction to assess the co., they had for the purposes of that assessment jurisdiction to decide all questions of fact necessary for ascertaining the amount of the profits, & therefore prohibition would not lie, the proper remedy, if the comms. were wrong in

point of law, being by appeal upon a case stated.—*R. v. CLERKENWELL GENERAL COMRS. OF TAXES*, [1901] 2 K. B. 879; 70 L. J. K. B. 1010; 85 L. T. 503; 65 J. P. 724; 17 T. L. R. 744, C. A.

Annotations.—*Consd. R. v. Bloomsbury Income Tax Comrs.*, [1915] 3 K. B. 788; *R. v. Kensington Income Tax Comrs., Ex p. Aramayo* (1915), 6 Tax. Cas. 613.

——— **Errors in procedure.**—*See* Sect. 4, sub-sect. 6, *post*.

2133. Remedy by indictment—Commission of nuisance by local justices.—The justices of D. having, under Bridges Act, 1803 (c. 59), contracted for the building of a new bridge in a different site, in lieu of the old one, & having directed the old bridge to be taken down before the new one was passable, the ct. refused a writ of prohibition to them, to restrain them from pulling down the old before the new bridge was passable, referring complainants to the ordinary remedy by indictment, if the pulling down the old bridge were a nuisance.—*R. v. DORSET JJ.* (1812), 15 East, 594; 104 E. R. 967.

2134. Prohibition additional or alternative remedy—Matter without jurisdiction of inferior court—

Appeal.—Pltf. in an action in the county ct. to recover lands delivered the summons to the bailiff 39 clear days, & the bailiff served it upon deft. 38 clear days, before the return day. At the hearing the judge ruled the service was good, & tried the case, giving judgment for pltf.:—*Held*: (1) the provision in C. C. R., Ord. 8, r. 7, with respect to the time of delivering the summons to the bailiff was obligatory, & therefore the judge ought not to have tried the case; (2) deft.'s proper remedy was to appeal from the judge's ruling, & not to apply for a prohibition against the issue of execution on the judgment.

As to deft.'s remedy by prohibition I do not think it necessarily follows that an appeal will not lie because there is a remedy by prohibition (GROVE, J.).—*BARKER v. PALMER* (1881), 8 Q. B. D. 9; 51 L. J. Q. B. 110; 45 L. T. 480; 30 W. R. 59, D. C.

Annotations.—*As to* (1) *Reid. Jones' Trustees v. Gittins* (1884), 51 L. T. 599. *As to* (2) *Consd. Sweetland v. Turkish Cigarette Co.* (1899), 80 L. T. 472. *Reid. Smythe v. Wiles*, [1921] 2 K. B. 66; *Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169.

2135. ————].—Where an order has been made in circumstances that would give a Div. Ct. jurisdiction to issue a prohibition, the party aggrieved is not thereby deprived of his right to appeal against such an order to the Div. Ct. in the ordinary way instead of applying for a prohibition.—*SWEETLAND v. TURKISH CIGARETTE CO.* (1899), 80 L. T. 472; 47 W. R. 511; 43 Sol. Jo. 417, D. C.

Annotations.—*Reid. Smythe v. Wiles*, [1921] 2 K. B. 66; *Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169.

2136. ————].—Where, in a county ct. action founded on an alleged breach of contract within the district, the county ct. judge had, contrary to C. C. R., Ord. 7, r. 41 (e), made an order for the service of the summons on deft. in Scotland:—*Held*: the ct. in the exercise of its discretion would prohibit, on the ground of absence of jurisdiction, further proceedings, although there was an alternative remedy open to deft. by way

2134 i. Prohibition additional or alternative remedy—Matter without jurisdiction of inferior court—Certiorari.—A magistrate was without jurisdiction; he convicted. Notice of motion for prohibition was served on him. On the return:—*Held*: a certiorari might issue.—*R. v. HUDGINS* (1907), 9 O. W. R. 289, 376; 14 O. L. R. 139.—*CAN.*

2134 ii. ————].—*CARSON v.*

MARTLEY (1886), 1 B. C. R. 281.—*CAN.*

2134 iii. ———— *Action brought in wrong court—Transfer of action.*—Where in an action the plaintiff on its face shows want of jurisdiction, & that the action should have been brought in another ct., deft. may apply for prohibition, but the more convenient remedy is by application for transfer of the cause.—*MAPLE CRISPETTE CO. v.*

NATIONAL BROKERAGE CO. (1920), 1 W. W. R. 332.—*CAN.*

h. ———— *Statutory remedy—Appeal.*—*Exp. WEDLOCK* (1899), 20 N. S. W. L. R. 353.—*AUS.*

BIRD (1891), 9 N. Z. L. R. 315.—*N.Z.*

i. ————].—*HOWARD v. DOIG* (1899), 18 N. Z. L. R. 766.—*N.Z.*

Sect. 2.—Alternative remedies. Sects. 3 & 4: Sub-sects. 1 & 2.]

of an application to the county ct. judge, to set aside the service or discharge the order authorising such service.—**CHANNEL COALING CO. v. ROSS**, [1907] 1 K. B. 145; 76 L. J. K. B. 145; 95 L. T.

— **Injunction.**—The jurisdiction to grant prohibition is now conferred by the Jud. Acts upon every judge of the High Ct., but, inasmuch as one of the main objects is to enable the ct. to decide, if possible in one proceeding, all the questions in dispute in the same matter & between the same parties & to grant an injunction in all cases in which it shall appear to the ct. "just & convenient" so to do, the ct. may, in any case in which it has power to grant prohibition, grant an injunction to restrain the proceedings in the inferior ct.—**HEDLEY v. BATES** (1880), 13 Ch. D. 498; 49 L. J. Ch. 170; 42 L. T. 41; 28 W. R. 365.

Annotations:—**Consd.** **Stannard v. St. Giles Camberwell** (1882), 20 Ch. D. 190; **North London Ry. v. G. N. Ry.** (1883), 11 Q. B. D. 30; **The Teresa** (1894), 71 L. T. 342; **St. James's Hall v. L. C. C.** (1900), 83 L. T. 98; **Re Connolly, Wood v. Connolly**, [1911] 1 Ch. 731. **Refd.** **The Receipts**, [1893] P. 255; **Grand Junction Waterworks Co. v. Hampton U. C.**, [1898] 2 Ch. 331. **Mentd.** **Barlow v. St. Mary Abbott's Kensington** (1883), 31 W. R. 514; **Hayward v. East London Waterworks Co.** (1884) 28 Ch. D. 138; **New Romney Corp. v. New Romney Sewers Comrs.** [1892] 1 Q. B. 840.

2138. — **Two railway cos. were empowered by a special Act to enter into a working agreement but no provision was made respecting arbn. The agreement made under the Act contained a clause that any difference between the cos. should be determined by arbn. in accordance with the provisions of Railway Cos. Arbitration Act, 1859 (c. 59). Differences having arisen one of the cos. called upon the Railway Comrs. to decide the differences under Regulation of Railways Act, 1873 (c. 48). The other co. accordingly issued a writ for an injunction against the first co., which was amended by making the Railway Comrs. parties, & asking for prohibition:—**Held:** the Railway Comrs. had no jurisdiction to undertake the arbn. & a prohibition would be issued accordingly.—**GREAT WESTERN RY. CO. v. WATERFORD & LIMERICK RY. CO.** (1881), 17 Ch. D. 493; 50 L. J. Ch. 513; 44 L. T. 723; 29 W. R. 826; **sub nom.** **WATERFORD & LIMERICK RY. CO. v. GREAT WESTERN RY. CO.**, 3 Ry. & Can. Tr. Cas. 546, C. A.**

Annotations:—**Consd.** **Stannard v. St. Giles Camberwell** (1882), 20 Ch. D. 190. **Mentd.** **Barlow v. St. Mary Abbott's**,

PART VIII. SECT. 4, SUB-SECT. 1.

2142 i. General rule.—There are three grounds of prohibition—want of jurisdiction; excess of jurisdiction; & deciding contrary to the common or statute law on a temporal matter arising incidentally before the inferior ct.—**BRADSHAW v. CRONAN** (circa 1800), Rowe, 656.—**IR.**

2142 ii. — **An inferior ct., when acting within its jurisdiction, cannot be restrained by prohibition no matter how erroneously it may decide on either facts or law, unless the error complained of involves the doing of something contrary to the general laws of the land or so vicious as to violate some fundamental principle of justice.**—**CANADIAN NORTHERN RY. CO. v. WILSON**, [1918] 3 W. W. R. 184.—**CAN.**

2142 iii. — **Although the ct. may stop an inquiry, if conducted without jurisdiction or contrary to natural justice, or to the principles of common law, it has no jurisdiction to prohibit the examination of a particular witness.**—**Ex p. WEBBER** (1886), 7 N. S. W. L. R. 317; 3 N. S. W. W. 10.—**AUS.**

2142 iv. — **There must be something to prohibit.**—An order under which nothing remains to be done, cannot be made the subject of prohibition.—**R. v. CALL, Ex p. BROWN** (1884), 10 V. L. R. 359.—**AUS.**

2142 v. — **On an application for a prohibition it appeared that appt. had, after execution issued, paid the amount of the verdict to the bailiff, who had paid it to the execution creditor:—**Held:** prohibition could not issue as there was nothing to prohibit.**—**Ex p. MEDLYN** (1893), 14 N. S. W. L. R. 276; 9 N. S. W. W. N. 185.—**AUS.**

2142 vi. — **Exp. MANNING** (1897), 18 N. S. W. L. R. 324; 14 N. S. W. W. N. 15.—**AUS.**

2142 vii. — **Prohibition will only issue where there is something to prohibit.**—**McGREGOR v. BESWICK** (1884), 3 N. Z. L. R. 83.—**N.Z.**

m. Act must be judicial—Not ministerial.—A prohibition will not lie against the grant by a warden of permission to make a road over mining works, 37 Vic. No. 13, s. 30, such grant being a ministerial act &

Kensington (1883), 31 W. R. 514; **Halesowen Ry. v. G. W. Ry. & Mid. Ry.** (1883), 4 Ry. & Can. Tr. Cas. 224; **North London Ry. v. G. N. Ry.** (1883), 52 L. J. Q. B. 380; **Mid. Ry. v. G. W. Ry.** (No. 3) (1887), 5 Ry. & Can. Tr. Cas. 287; **R. v. County of London JJ. & L. C.** (1901), Q. B. 435; **G. W. Ry. v. Barry Ry.**, [1909] 2

2139. — **Whilst a ct. having before it a case within its own jurisdiction involving a question which may be decided by magistrates, will grant an injunction rather than issue a prohibition, yet where the legislature has pointed out a proceeding before magistrates as the appropriate remedy, it will not, generally, interfere by injunction.**—**STANNARD v. ST. GILES, CAMBERWELL VESTRY** (1882), 20 Ch. D. 190; 51 L. J. Ch. 629; 46 L. T. 243; 30 W. R. 693, C. A.

Annotations:—**Consd.** **Re Connolly, Wood v. Connolly**, [1911] 1 Ch. 731. **Refd.** **Grand Junction Waterworks Co. v. Hampton U. C.**, [1898] 2 Ch. 331; **Merrick v. Liverpool Corp.**, [1910] 2 Ch. 449. **Mentd.** **Barlow v. St. Mary Abbott's Kensington** (1883), 31 W. R. 514; **North London Ry. v. G. N. Ry.** (1883), 11 Q. B. D. 30; **Barrett v. Day, Day v. Foster** (1890), 43 Ch. D. 435.

2140. — **A judge of the Admty. Div. has power to grant a prohibition with reference to a matter pending before an inferior ct. & he has power to issue an injunction to a party proceeding in an inferior ct. to restrain him from going on with such proceedings.**—**THE THERESA** (1894), 71 L. T. 342; 7 Asp. M. L. C. 505; **sub nom.** **THE THERESA**, 11 R. 681.

2141. — **Appeal pending.**—**WHITE v. STEELE**, No. 2121, ante.

SECT. 3.—STATUTORY EXCLUSION OF.

To High Courts of Justice & Court of Appeal.—**See** Judicature Act, 1873 (c. 60), s. 24 (5).

Mayor's Court—Under Mayor's Court of London Procedure Act, 1857 (c. clvil.).—**See** MAYOR'S COURT, LONDON.

Salford Hundred Court—Under Salford Hundred Court of Record Act, 1868 (c. cxxx.).—**See** COURTS, pp. 202, 203, Nos. 1112–1114, ante.

See, now, Salford Hundred Court Act, 1911 (c. clxxii.).

SECT. 4.—GROUNDS OF PROHIBITION.

SUB-SECT. 1.—IN GENERAL.

2142. General rule.—A prohibition is for two causes, first to give to us jurisdiction of that which doth belong unto us, & secondly when a thing is done against the law, & in breach of the law, then we use to grant a prohibition (**DODDRIDGE, J.**).—

not a judicial proceeding.—**Ex p. MILLER** (1907), 7 S. R. N. S. W. 214.—**AUS.**

n. — **NEWCASTLE COAL CO. v. FIREMEN'S UNION** (1908), 6 C. L. R. 466.—**AUS.**

o. — **GODSON v. TORONTO CORPN.** (1890), 18 S. C. R. 36.—**CAN.**

p. — **R. v. COURSEY** (1896), 27 O. R. 181.—**CAN.**

q. — **Re CLEMENT & PUBLIC INQUIRIES ACT**, [1919] 3 W. W. R. 309; 48 D. L. R. 237.—**CAN.**

r. — **Where the question is purely one of administration the remedy is by appeal, & not prohibition.**—**Howell v. Ross** (1898), 16 N. Z. L. R. 684.—**N.Z.**

s. Whether being "contrary to natural justice" ground.—A ct. found that defts. were liable in an action for work & labour; they applied for a prohibition on the ground that the verdict was contrary to natural justice:—**Held:** prohibition would lie.—**PURCELL v. PERPETUAL TRUSTEE**

2156 ii. ————.]—Where the splitting of causes of action is forbidden, prohibition will be granted.—

Sect. 4.—Grounds of prohibition: Sub-sects. 2 & 3.]

ought to have done so, & sued here, & not put deft. to an unnecessary vexation, & he could not split an entire debt into divers, to give the inferior ct. jurisdiction in *fraudem legis*.—*GIRLING v. ALDERS* (1870), 1 Vent. 73; 2 Keb. 617; 86 E. R. 51.

Annotations:—*Re Ackroyd* (1847), 1 Exch. 479. *Reid. Clerk v. Andrews* (1839), 1 Show. 9. *Mentd. Jones v. Pritchard* (1849), 18 L. J. Q. B. 104.

2157. ——*Qu.*: whether a prohibition ought to be granted where a cause of action has been improperly divided into several suits, but the aggregate amount claimed does not exceed the amount specified by County Cts. Act, 1846 (c. 95), s. 58.—*Re AYKROYD* (1848), 1 Exch. 479; 5 Dow. & L. 701; Cox, M. & H. 79; 154 E. R. 204; *sub nom.* GRIMBLY *v.* AYKROYD, 17 L. J. Ex. 157; 11 L. T. O. S. 105; 12 J. P. 411; 12 Jur. 357.

Annotations:—*Reid. Re Wickham v. Leo* (1848), 18 L. J. Q. B. 21; *Jones v. Pritchard* (1849), 18 L. J. Q. B. 104; *Kimp-ton v. Willey* (1850), 9 C. B. 719; *Isaac v. Wyld* (1851), 7 Exch. 163; *London Corp'n. v. Cox* (1867), L. R. 2 H. L. 238. *Mentd. Acworth v. Dowsett* (1848), Cox, M. & H. 118; *Wood v. Perry* (1849), 3 Exch. 442; *Re Brunskill v. Powell* (1850), 1 L. M. & P. 550; *Boddington v. Castelli* (1853), 17 Jur. 781; *Bonsey v. Wordsworth* (1856), 18 C. B. 325; *Copeman v. Hart* (1863), 14 C. B. N. S. 731; *Jackson v. Grimley* (1864), 12 W. R. 686; *James v. Evans*, (1897) 2 Q. B. 180.

2158. — To entertain appeal.]—A poor rate was made for the township of E. on July 8, 1870. The L. United Gas Co., being dissatisfied therewith, on Aug. 3, applied to the union assessment committee for relief; but the committee declined to grant it. The next sessions for the borough of L. were held on Sept. 1, but no appeal against the rate was then entered. The co., having given the 21 days' notice required by the Union Assessment Act, 1861 (c. 39), s. 1, moved to enter an appeal against the rate at the sessions held on Oct. 26, contending that the sessions of Sept. were not the next practicable sessions after the decision of the assessment committee, inasmuch as it would leave them only six days before the 21 days, which was not a sufficient time to enable them to determine whether they would appeal or not. The recorder, yielding to this argument, allowed the appeal to be entered & respite at the Oct. sessions. On a motion for a prohibition:—*Held*: it was competent to the Ct. of C. P. to review the decision of the recorder, & he was wrong in holding the Sept. sessions not to be the next practicable sessions, & consequently he had no jurisdiction to entertain the appeal at the Oct. sessions.—*LIVERPOOL GAS CO. v. EVERTON* (1871), L. R. 6 C. P. 414; 40 L. J. M. C. 104; 19 W. R. 412.

Annotations:—*Reid. Wallace v. Allen* (1875), L. R. 10, C. P.

Re McDonald v. Dowdall (1897), 28 O. R. 212.—CAN.

2156 iii. ——*Re McMILLAN v. FORTIER* (1901), 21 C. L. T. 501; 2 O. L. R. 231.—CAN.

2156 iv. ——*Re PHILIPS v. HANNA* (1902), 22 C. L. T. 209; 3 O. L. R. 558; 1 O. W. R. 245.—CAN.

b. — Balance of disputed account beyond jurisdiction.]—Where judgment is given for a sum in itself within the jurisdiction of a ct., but which is the balance of a sum beyond its jurisdiction, prohibition will be granted.—*SHERWOOD v. CLINE* (1889), 17 O. R. 30.—CAN.

c. ——*Deft.* moved for prohibition on the ground that the action was for a balance of an unsettled account exceeding the ct.'s jurisdiction & so forbidden by R. S. M., c. 33.

On the facts:—*Held*: the ct. had jurisdiction & prohibition should be refused.—*McMAIN v. OBER* (1895), 10 Man. L. R. 391.—CAN.

2160 i. — Must be shown distinctly.]—*Ex p. AUSTRALIAN AGRICULTURAL CO., LTD., R. v. COMMONWEALTH COURT OF CONCILIATION & ARBITRATION (PRESIDENT OF)* (1916), 22 C. L. R. 261.—AUS.

2160 ii. ——*Prohibition* was refused where appt. did not show that all the materials, on which the order which was alleged to have been made, were before the ct., so as to enable it to see clearly whether the inferior ct. acted without jurisdiction.—*Re GRASS v. ALLAN* (1866), 26 U. C. R. 123.—CAN.

2160 iii. ——*Re HOLLAND v. WALLACE* (1880), 8 P. R. 186.—CAN.

607; *R. v. Longe, etc. JJ. & Cooke* (1897), 66 L. J. Q. B. 278. *Mentd. R. v. Surrey JJ.* (1880), 6 Q. B. D. 100; *R. v. Carmarthen JJ.* (1893), Ryde, Rat. App. (1891-1893), 334; *R. v. De Grey*, (1900) 1 Q. B. 521; *R. v. Norfolk JJ., Ex p. Wayland Union*, (1909) 1 K. B. 463; *R. v. Shoreditch Assmt. Com., Ex p. Morgan*, (1910) 2 K. B. 859.

2159. — Service of process outside jurisdiction.]—A bill of foreclosure was brought at the Grand Sessions of Montgomeryshire, & the *sub-pœna* was served in England upon deft.; he & pltf. having both estates within the jurisdiction, & the mortgaged premises lying there also:—*Held*: a prohibition ought to go as they could serve no process out of the jurisdiction.—*VAUGHAN v. EVANS* (1725), 1 Stra. 630; 2 Ld. Raym. 1408; 8 Mod. Rep. 374; 93 E. R. 744.

2160. — Must be shown distinctly.]—To entitle a party to a prohibition to restrain comrs. under a local improvement Act from proceeding to enforce a penalty for an offence against the Act, he must distinctly show that they are acting without jurisdiction. It is not enough to show that it is doubtful upon the Act of Parliament whether their right jurisdiction extends to the place where the alleged offence was committed.—*Re BIRCH* (1855), 15 C. B. 743; 139 E. R. 617.

2161. Excess of jurisdiction.]—LANGDALE'S CASE (1808), 12 Co. Rep. 58; 77 E. R. 1338.

Annotations:—*Reid. Manby & Richardson v. Scot* (1863), 1 Keb. 482. *Mentd. Heyward & Whitbroke's Case* (1610), 13 Co. Rep. 64.

2162. ——*WARNER v. SUCKERMAN & COATES*, No. 2282, *post*.

2163. ——*Inferior cts.* are limited in their jurisdiction & ought to be kept in order by prohibition if they exceed, & if they proceed in matters not within their jurisdiction, their proceedings are void (ROLL, J.).—*ANON.* (1647), Sty. 45; 82 E. R. 517.

2164. ——*MACKONCHIE v. PENZANCE (LORD)*, No. 2129, *ante*.

2165. — Not mere error in exercise of powers.]—Where a writ of prohibition was issued out of the Petty Bag Office of the Ct. of Ch. in vacation, upon an *ex p.* affidavit, without leave of the ct. or a judge, & disclosed no sufficient ground of prohibition on the face of it, the ct. set it aside on motion.

After recovery of judgment for a debt against a deft. in a county ct., he petitioned for & obtained his discharge under Judgments Act, 1838 (c. 110), & inserted the debt in his schedule. On a judgment summons before the county ct. under the County Cts. Act, 1846 (c. 95), s. 60, he pleaded his discharge, but the county ct. judge, notwithstanding, made an order for payment of the debt by instalments, & afterwards, on default, for his committal to prison:—*Held*: although deft., who had been imprisoned, might be entitled to his

2161 i. Excess of jurisdiction.]—TRAMWAYS CASE (No. 1) (1914), 18 C. L. R. 54.—AUS.

2161 ii. ——*MACARA v. MORISE* (1861), 11 C. P. 74.—CAN.

2161 iii. ——*CARSLY v. FISKEN* (1868), 4 P. R. 255.—CAN.

2161 iv. ——*STEPHENS v. LA-PLANTE* (1879), 8 P. R. 52.—CAN.

2161 v. ——*Re ELLIOTT v. BIETTE* (1892), 21 O. R. 595.—CAN.

2161 vi. ——*FIVE CHINAMEN v. NEW WESTMINSTER CITY CORPN.* (1892), 2 B. C. R. 168.—CAN.

2161 vii. ——*Re BRAZILL v. JOHNS* (1893), 24 O. R. 209.—CAN.

2161 viii. ——*Prohibition* is a matter of right where it is shown that an inferior ct. is exceeding its jurisdiction.—*Re ALLAN* (1914), 14 E. L. R. 271.—CAN.

Sect. 4.—Grounds of prohibition: Sub-sects. 3 & 4, A. & B.]

2177. —[—]—**SPARKS v. MARTYN** (1668), 1 Vent. 1; 86 E. R. 1.

Annotations.—**Reid.** *Ex p. Jolliffe* (1873), 42 L. J. Q. B. 121. **Mentd.** *R. v. Almon* (1765), *Wilm.* 243.

2178. —[—]—**A mate, becoming master during the voyage, was allowed to sue in the Admty. quoad the time he was mate, & prohibited quoad the time of his being master.**—**BAILY v. GRANT** (1700), 1 Salk. 33; *Holt*, K. B. 48; 91 E. R. 35; *sub nom.* **BAILY v. GRANT**, 1 Ld. Raym. 632; *sub nom.* **GRANT v. BAILY**, 12 Mod. Rep. 440.

2179. —[—]—**The captain who was pltf. went out to sea as mate of the ship. During the voyage the captain died, & was succeeded by the mate, who came home as captain, & then sued for his whole wages in the Admty., as well those accruing to him as mate, as for those that were due to him as captain. Because the captain cannot sue for his wages in the Admty., being a privilege allowed only to the mariners, a prohibition was moved for:—Held: pltf. might sue in the Admty. for the wages which accrued to him as mariner, but for what was due to him as captain, he must sue in the cts. of common law; & so a prohibition would be granted as to that part only.**—**READ v. CHAPMAN** (1732), *Kel. W.* 226; 2 Stra. 937; 25 E. R. 582; *sub nom.* **REED v. CHAPMAN**, 2 Barn. K. B. 160.

Annotations.—**Mentd.** *The Favourite* (1799), 2 Ch. Rob. 232; *Hanson v. Royden* (1867), L. R. 3 C. P. 47.

2180. —[—]—**Subject of suit within jurisdiction—Matter outside jurisdiction stated in course of proceedings—Intention to try matter in excess of jurisdiction.**—Where the subject of a suit in an inferior ct. is within the jurisdiction of that ct. though in the proceedings a matter be stated which is out of its jurisdiction, yet unless it is going on to try such matter, a prohibition will not lie.—**DUTENS v. ROBSON** (1789), 1 Hy. Bl. 100; 126 E. R. 60.

Annotations.—**Reid.** *Eversfield v. Newman* (1858), 4 C. B. N. S. 418; *Re Emery & Barnett* (1858), 4 C. B. N. S. 423.

2181. —[—]—**That where an inferior ct. acts within its jurisdiction as to part but exceeds as to part, a prohibition, though moved for as to the whole, may issue as to the part in excess, seems to have been early decided.** (**BRETT, L.J.**).—**SOUTH EASTERN RY. CO. v. RAILWAY COMRS.** (1881), 6 Q. B. D. 586; 50 L. J. Q. B. 201; 44 L. T. 203; 3 Ry. & Can. Tr. Cas. 464, C. A.

Annotations.—**Mentd.** *G. W. Ry. v. Railway Comrs.* (1881), 7 Q. B. D. 182; *Huddersfield Corp. v. G. N. Ry.* & M., S. & L. Ry. (1881), 50 L. J. Q. B. 587; *Beeston Brewery Co. v. Mid. Ry.* (No. 1) (1885), 5 Ry. & Can. Tr. Cas. 53; *Girardor Filin v. Mid. Ry.* (No. 2), *Beeston Brewery Co. v. Mid. Ry.* (No. 2) (1885), 5 Ry. & Can. Tr. Cas. 60; *R. v. Railway Comrs. & Distington Iron Co.* (1889), 22 Q. B. D. 642; *Winsford L. B. v. Cheshire Lines Committee* (1890), 24 Q. B. D. 456; *R. v. G. W. Ry.* (1893), 62 L. J. Q. B. 572; *Darlington L. B. v. L. & N. W. Ry.* (1894) 2 Q. B. 694; *Glamorganshire County Council v. G. W. Ry.* (1894), 8 Ry. & Can. Tr. Cas. 196; *West Ham Corp. v. G. E. Ry.* (1895), 64 L. J. Q. B. 340; *Milner v. G. N. Ry.* [1900] 1 Q. B. 795; *Metropolitan Water Board v. L. B. & S. C. Ry.*, [1910] 2 K. B. 890;

PART VIII. SECT. 4, SUB-SECT. 4.—A.

d. General rule—Judge giving himself jurisdiction.—Error in law is a basis for prohibition only when the judge thereby creates for himself a fictitious jurisdiction.—**Re AURORA SCRUTINY** (1913), 28 O. L. R. 475; 4 O. W. N. 1069.—**CAN.**

e. ———.—[—]—**Where a magistrate gives himself jurisdiction by an erroneous conclusion on a point of law, prohibition will lie.**—**R. v. SPARKS** (1913), 18 B. C. R. 116.—**CAN.**

2184 i. —[—]—**Matters within jurisdic-**

tion.—Where the ct. had jurisdiction both as to the parties & the amount of the claim, & the judge made a mistake in allowing pltf. to receive a verdict when he ought to have nonsuited him:—**Held:** not a matter that could be dealt with by prohibition.—**Ex p. MARTIN** (1890), 17 N. S. W. L. R. 200; 13 N. S. W. W. N. 66.—**AUS.**

2184 ii. —[—]—**It is no ground for prohibition that the judge decided against law & good conscience, if he had jurisdiction in the case.**—**SIDDALL v. GIBSON** (1859), 17 U. C. R. 98.

N. E. Ry. v. Ferens (1911), 15 Ry. & Can. Tr. Cas. 17; *Leek U. D. C. v. North Staffordshire Ry.* (1913), 15 Ry. & Can. Tr. Cas. 105; *County Hotel & Wine Co. v. L. & N. W. Ry.*, [1918] 2 K. B. 251.

2182. —[—]—**R. v. LOCAL GOVERNMENT BOARD, No. 2180, ante.**

2183. —[—]—**The maker of a promissory note, which was expressed in the body of it to be payable at an address within the City of London, was sued upon the note in the Mayor's Ct. Neither pltf. nor deft. resided or carried on business within the city, nor did any part of the cause of action arise within it, except the fact that presentment at the address named was, unless waived, necessary to render deft. liable:—Held: although pltf.'s case might be established by proving waiver of presentment, & therefore without showing that any part of the cause of action arose within the jurisdiction, upon pltf. undertaking to rely upon presentment in the city, & not upon waiver, an order for prohibition ought not to be granted.**—**JOSOLYNE v. ROBERTS**, [1908] 2 K. B. 349; 77 L. J. K. B. 845; 99 L. T. 282, D. C.

In county courts.—**See COUNTY COURTS, Vol. XIII., pp. 474, 550, Nos. 234, 1058, 1059.**

In ecclesiastical courts.—**See ECCLESIASTICAL LAW.**

SUB-SECT. 4.—WRONG DECISION OF INFERIOR COURT.

A. In Matters of Law.

2184. General rule—Matters within jurisdiction.—Motion for a rule to show cause why a writ of prohibition should not issue to certain magistrates of C. & the churchwardens of H. to prevent the execution of a warrant for the removal of a pauper. The warrant had been granted under circumstances in which, by Poor Removal Act, 1846 (c. 66), a warrant of removal ought not to have been granted.

We cannot give the assistance prayed for. If the magistrates decide wrongly we cannot correct them so long as they have jurisdiction, which in this case they had (*per CUR.*).—**Re ———** (1856), 20 J. P. Jo. 277.

2185. —[—]—**Remedy by way of appeal.**—**DENABY MAIN COLLIERY CO. v. MANCHESTER, SHEFFIELD & LINCOLNSHIRE RY. CO.** (1880), 3 Ry. & Can. Tr. Cas. 426, C. A.

Annotations.—**Mentd.** *Central Wales & Carmarthen Junction Ry. & Mid Wales Ry. v. G. W. Ry. L. & N. W. Ry.*, *Mid. Ry. & Pembroke & Tenby Ry.* (1882), 4 Ry. & Can. Tr. Cas. 110; *Broughton & Plas Power Coal Co. v. G. W. Ry.* (1883), 4 Ry. & Can. Tr. Cas. 191; *Phipps v. L. & N. W. Ry.*, [1892] 2 Q. B. 229; *Charrington Sells Dale v. Mid. Ry.* (1901), 11 Ry. & Can. Tr. Cas. 222.

2186. —[—]—**Not where other immediate remedy available—Though jurisdiction dependent on erroneous decision.**—An erroneous decision in point of law, as the misconstruction of an Act of Parliament, is not a sufficient ground for issuing a prohibition to the judge of an inferior ct. even though his jurisdiction to deal with the case may

—CAN.

2184 iii. —[—]—**Re PALL SINGURDON** (1916), 33 W. L. R. 325; 9 W. W. R. 940.—**CAN.**

2186 i. —[—]—**Though jurisdiction dependent on erroneous decision.**—An erroneous decision upon a point which, however essential to the validity of its order, the ct. is competent to try is not ground for prohibition.—**AMALGAMATED SOCIETY OF CARPENTERS & JOINERS v. HABERFIELD PROPRIETARY, LTD.** (1907), 5 C. L. R. 33.—**AUS.**

depend upon that decision, when another immediate remedy is open to appct.—*Re BOWEN* (1851), 21 L. J. Q. B. 10; 15 Jur. 1196; *sub nom.* TAMELIANE v. BOWEN, 18 L. T. O. S. 62.

2187. Misinterpretation of statute.]—Deft. libelled plff. for tithes in the spiritual ct. & plff. pleaded that the place was extra-parochial. Deft. replied an inclosure Act, 31 Geo. 3, c. 91, & insisted that it was thereby annexed to & made part of the parish whereof he was rector. The spiritual ct. decreed the tithes to be paid to deft. Upon a declaration in prohibition:—*Held*: the spiritual ct. had misconstrued the statute, & a prohibition might be granted after sentence, it appearing that the ct. could not otherwise have decreed the tithes than by misconstruction of the statute.—*GOULD v. GAPPER* (1804), 1 Smith, K. B. 528; 5 East, 345; 102 E. R. 1102.

Annotations:—*Distd.* *Re Bowen* (1851), 21 L. J. Q. B. 10. *Refd.* *Blunt v. Harwood* (1838), 8 Ad. & El. 610; *Hall v. Maule* (1838), 7 Ad. & El. 721; *Veley v. Burder* (1841), 12 Ad. & El. 265; *Maconochie v. Penzance* (1881), 6 App. Cas. 424; *R. v. Chester Bp.* (1901), 17 T. L. R. 533. *Mentd.* *Gorham v. Exeter Bp.* (1850), 15 Q. B. 52; *West Peckham v. Geary* (1889), Trist. 189; *R. v. Tristram*, [1902] 1 K. B. 816.

2188. — Subject matter within jurisdiction.]—I doubt whether a mere mistake in the construction of a statute is ground for prohibition, if the subject matter be within the jurisdiction of the ecclesiastical ct. (*LORD CAMPBELL, C.J.*).—*R. v. ELY* (*CHANCELLOR*), *Ex p. FOSTER* (1858), 30 L. T. O. S. 242; *subsequent proceedings*, 22 J. P. Jo. 96.

2189. — —.]—A judge had granted a certificate for full costs in contravention of Stat. Limitations, sect. 6:—*Held*: prohibition was not the proper remedy as the judge was acting within his jurisdiction.—*FARROW v. HAGUE* (1864), 3 H. & C. 101; 4 New Rep. 165; 33 L. J. Ex. 258; 10 L. T. 534; 28 J. P. 487; 10 Jur. N. S. 638; 12 W. R. 868; 159 E. R. 464.

2190. Refusal to accept statutory defence.]—*BERKELEY v. MORRICE* (1608), Hard. 502; 145 E. R. 569.

Annotation:—*Refd.* *Gould v. Gapper* (1804), 5 East, 345.

2191. Overruling invalid plea—On improper grounds.]—A prohibition shall not be granted to an inferior ct. for overruling a plea which is in itself bad, though it was overruled on improper grounds.—*EWER v. JONES* (1704), 2 Ld. Raym. 934; 1 Com. 137; 6 Mod. Rep. 25; 92 E. R. 124.

Annotations:—*Mentd.* *Millar v. Taylor* (1769), 4 Burr. 2303; *Lothian v. Henderson* (1803), 3 Bos. & P. 499; *Webb v. Jiggs* (1815), 4 M. & S. 113; *Braithwaite v. Skinner* (1839), 5 M. & W. 313; *Hopkins v. Swansea Corp.* (1839), 8 L. J. N. S. Ex. 121; *Longbottom v. Longbottom* (1852), 8 Exch. 203; *The City of Mecca* (1879), 5 P. D. 26.

By county courts.]—*See* COUNTY COURTS, Vol. XIII., p. 549, Nos. 1042–1049.

2187 i. Misinterpretation of statute.]—Where it is necessary to interpret a statute in order to find out whether the ct. should decide the rights of the parties at all then, if the judge misinterprets the statute & gives himself jurisdiction to decide such rights, prohibition will lie; but, if it be necessary to interpret a statute simply to decide the rights of the parties, prohibition will not, however far astray the judge may go.—*Re AMELIAR-BURG v. PITCHER* (1906), 8 O. W. R. 915; 13 O. L. R. 417.—*CAN.*

2187 ii. —.]—No misinterpretation, actual or apprehended, of a statute, is relevant to the question of prohibition unless the misinterpretation itself gives jurisdiction.—*Re ROYSTON PARK SUBDIVISION & STERLTON* (1913), 28

O. L. R. 629; 4 O. W. N. 1273.—*CAN.*

i. — Judge giving himself jurisdiction.]—The wrong determination by a judge of a question, depending upon the construction of statutes, by which decision he gave himself jurisdiction, is reviewable on a motion for prohibition.—*Re MACOFFE v. HUTCHINSON* (1887), 12 F. R. 41, 167.—*CAN.*

ii. —.]—*Re SIMS v. KELLY* (1890), 20 O. R. 291.—*CAN.*

PART VIII. SECT. 4, SUB-SECT. 4.—B.

2192 i. General rule.]—Where the question was one of fact, the decision thereon is not reviewable in prohibition.—*Re WESTERN FAIR ASSOCN. v.*

By ecclesiastical courts.]—*See* ECCLESIASTICAL LAW.

B. In Matters of Fact.

Assumption of jurisdiction on erroneous view of facts—By county court judge.]—*See* COUNTY COURTS, Vol. XIII., p. 549, Nos. 1046–1050.

2192. General rule.]—A lessor having brought ejectment for a forfeiture in a county ct.:—*Held*: the county ct. judge having decided on conflicting evidence that the value of the premises did not exceed the amount specified by County Cts. Act, 1867 (c. 142), s. 11, the ct. could not review his decision by prohibition, though on a point going to his jurisdiction only.

An inferior tribunal cannot give itself jurisdiction by deciding without evidence; on the other hand, it cannot refuse to go into evidence in order to ascertain whether it has or has not jurisdiction; & if it takes upon itself jurisdiction without evidence, or after refusing to go into evidence, & it turns out that there was no jurisdiction, this ct. will interfere by prohibition. But when the judge has gone into the inquiry, & has determined the question of fact, this ct. cannot look to see whether the decision was, on the balance of evidence, right or not. We cannot review the decision of an inferior tribunal as though it were a verdict of a jury in an action in our own ct. We have no jurisdiction of that kind. When the judge has gone into the evidence we are precluded from going into the matter, & are bound by his decision (*COCKBURN, C.J.*).—*BROWN v. COCKING* (1868), L. R. 3 Q. B. 672; 9 B. & S. 503; 37 L. J. Q. B. 250; 18 L. T. 560; 16 W. R. 933.

Annotation:—*Refd.* *Turner v. Kingsbury Collieries*, [1921] 3 K. B. 169. *Mentd.* *Elston v. Rose* (1868), L. R. 4 Q. B. 4.

2193. Involving jurisdiction of inferior court.]—*LIVERPOOL GAS CO. v. EVERTON*, No. 2158, *ante*.

2194. —.]—It has been laid down that where the magistrates have jurisdiction to enter upon an inquiry & their jurisdiction depends upon a matter of fact, it is no objection to their jurisdiction that they may decide that matter wrongly. But then, even according to that law it must appear that the inquiry would be within the scope of the jurisdiction of the magistrates, & if it was not so, then a prohibition must go (*LORD COLERIDGE, C.J.*).—*Re BROMLEY KENT J.J. & NICHOLLS* (1889), 6 T. L. R. 106, D. C.

—*See, also*, COURTS, pp. 108 *et seq.*, *ante*.

Misreception of evidence—By county courts.]—*See* COUNTY COURTS, Vol. XIII., pp. 511, 550, Nos. 608, 1052.

HUTCHINSON (1887), 12 L. R. 40.—*CAN.*

2192 ii. —.]—*Re FIELD v. RICE, Re FORD v. RICE* (1890), 20 O. R. 309.—*CAN.*

2193 i. Involving jurisdiction of inferior court.]—Plff. brought an action in the N. ct. against deft. co., at N., to recover damages for injuries sustained on land belonging to the co. in N. district. The co.'s registered office was in S. The judge decided that he had jurisdiction, heard the case, & found a verdict for plff.:—*Held*: the residence of the co. was a question of fact, & the ct. could not grant a prohibition.—*HOLBURN v. BURWOOD EXTENDED COAL MINING CO.* (1890), 11 N. S. W. L. R. 365; 7 N. S. W. N. 70.—*AUS.*

Sect. 4.—Grounds of prohibition: Sub-sects. 5 & 6.
Sect. 5: Sub-sect. 1.]

SUB-SECT. 5.—BIAS OF THE JUDGE.

2195. Interest in proceedings.]—BROOKES v. RIVERS (EARL) (1668), Hard. 503; 145 E. R. 569. **Annotations:—***Reid*. Dimes v. Grand Junction Canal (Proprietors) (1852), 3 H. L. Cas. 759. *Mentd.* R. v. Rochester (1851), 17 Q. B. 1.

2196. —.]—A public co., which was incorporated, filed a bill in equity against a landowner, in a matter largely involving the interests of the co. The Lord Chancellor had an interest as a shareholder in the co. to the amount of several thousand pounds, a fact which was unknown to deft. in the suit. The cause was heard before the V.-C. who granted the relief sought by the co. The Lord Chancellor on appeal, affirmed the order of the V.-C.:—*Held*: the Lord Chancellor was disqualified, on the ground of interest, from sitting as a judge in the cause, & his decree was voidable, & must be reversed.

If this had been a proceeding in an inferior ct., one to which a prohibition might go from a ct. in Westminster Hall, such a prohibition would be granted, pending the proceedings, upon an allegation that the presiding judge of the ct. was interested in the suit (PARKE, B.).—*DIMES v. GRAND JUNCTION CANAL (PROPRIETORS)* (1852), 3 H. L. Cas. 759; 8 State Tr. N. S. 85; 19 L. T. O. S. 317; 17 Jur. 73; 10 E. R. 301, H. L.; *revsq.* S. C. *sub nom.* GRAND JUNCTION CANAL CO. v. DIMES (1849), 12 Beav. 63; (1850), 2 Mac. & G. 285, L. C.

Annotations:—*Distd.* R. v. Farrant (1887), 20 Q. B. D. 58. *Refd.* R. v. West Riding JJ. (1852), 17 J. P. Jo. 87; *Ranger v. G. W. Ry.* (1854), 5 H. L. Cas. 72; *R. v. Storks* (1857), 5 W. R. 563; *Wilde v. Russell* (1866), L. R. 1 C. P. 722; *R. v. M., S. & L. Ry.* (1867), 36 L. J. Q. B. 171. *Mentd.* Doe d. Patrick v. Beaufort (1851), 6 Exch. 498; *Bright v. Hutton*, *Hutton v. Bright* (1852), 3 H. L. Cas. 341; *Hawkins v. Gathercole* (1852), 16 Jur. 650; *Egerton v. Brownlow* (1853), 4 H. L. Cas. 1; *Bancks v. Ollerton* (1854), 10 Exch. 168; *R. v. Surrey JJ.* (1855), 19 J. P. Jo. 755; *Ex p. Hopkins* (1857), 4 Jur. N. S. 529; *Ellis v. Hopper* (1858), 3 H. & N. 766; *Kemp v. Rose* (1858), 1 Giff. 258; *Lancaster & Carlisle Ry. v. Heaton* (1858), 27 L. J. Q. B. 195; *Williams v. G. W. Ry.* (1858), 3 H. & N. 869; *Parr v. Winteringham* (1859), 5 Jur. N. S. 787; *Phillips v. Eyre* (1870), L. R. 6 Q. B. 1; *Todd v. Robinson* (1884), 14 Q. B. D. 739; *Leeson v. General Council of Medical Education & Registration* (1889), 43 Ch. D. 368; *Lowther v. Cale. Ry.*, [1891] 3 Ch. 443; *Allinson v. General Medical Council* (1894), 42 W. R. 289; *City of London Electric Lighting Co. v. London Corp.* (1900), 82 L. T. 530; *R. v. Simpson*, [1914] 1 K. B. 66; *Transvaal*

Lands Co. v. New Belgium (Transvaal) Land & Development Co., [1914] 2 Ch. 488; *Haynes v. Davis*, [1915] 1 K. B. 332.

2197. — Nature of.]—It is no ground for prohibiting a cause before the chancellor of a diocese in the Consistorial Ct. of the diocese, that the bishop of the diocese is interested in the cause.

The law is wisely jealous on this head, & the slightest real interest in the issue of a suit incapacitates any one from acting as judge in it, although it may be certain that in fact the interest, from its real or proportionate insignificance, cannot create any bias in his mind. But then it must be a real interest (LORD CAMPBELL, C.J.).—*Ex p. MEDWIN* (1853), 1 E. & B. 609; 17 Jur. 1178; 118 E. R. 566; *sub nom.* RAWLINSON v. MEDWIN, *Ex p. MEDWIN*, 22 L. J. Q. B. 169; 21 L. T. O. S. 5; 17 J. P. 166.

Annotations:—*Distd.* R. v. Taunton Corp. (1887), 4 T. L. R. 87. *Mentd.* Fagg v. Lee (1873), L. R. 4 A. & E. 135; *Lee v. Flack*, [1896] P. 138; *R. v. Tristram*, [1902] 1 K. B. 816.

2198. — Pecuniary or substantial.]—Any pecuniary interest in the subject-matter of the litigation however slight will disqualify a magistrate from taking part in the decision of a case.

If a magistrate has a substantial interest, other than pecuniary, in the result of the hearing, as to make it likely that he will have a bias, he is disqualified.

The fact that a magistrate has been subpoenaed & that it is intended to call him as a witness at the hearing, is not a legal disqualification, & the High Ct. will not on that ground prohibit the magistrate from sitting.—*R. v. FARRANT* (1887), 20 Q. B. D. 58; 57 L. J. M. C. 17; 57 L. T. 880; 52 J. P. 116; *sub nom.* R. v. TAUNTON CORPN., 4 T. L. R. 87, D. C.

Annotations:—*Refd.* R. v. Cumberland JJ., *Ex p. Mid. Ry.* (1888), 58 L. T. 491. *Mentd.* Allison v. General Council of Medical Education & Registration, [1894] 1 Q. B. 750.

SUB-SECT. 6.—ERRORS IN PROCEDURE.

2199. General rule.]—The ct. will not issue prohibition upon the ground of an objection which relates merely to a rule of practice in the ct. below.—*RACKHAM v. BLUCK* (1846), 9 Q. B. 691; 16 L. J. Q. B. 82; 11 J. P. 389; 11 Jur. 325; 115 E. R. 1439; *sub nom.* *Re BLUCK*, *RACKHAM v. BLUCK*, 8 L. T. O. S. 275.

PART VIII. SECT. 4, SUB-SECT. 5.

h. General rule.]—Prohibition lies if bias is established.—*R. (REA) v. DAVISON*, [1913] 2 I. R. 342; 47 I. L. T. 67.—*IR.*

k. —.]—*Re NETTLESHIP* (1899), 4 Terr. L. R. 148.—*CAN.*

2195 i. Interest in proceedings.]—A member of a local board of health is disqualified from sitting as a justice to adjudicate upon a proceeding to enforce an order of such board.—*R. v. LLOYD*, *Ex p. GODFREY* (1875), 1 V. L. R. 120.—*AUS.*

2195 ii. —.]—*Pltf.*, who had recovered a judgment against deft., initiated proceedings for the examination of deft. before D., a comr. Deft.'s solr. appeared before D., & objected to his proceeding with the examination, on the ground that, as he had such an interest in the result of the examination as to disqualify him from acting. Consequently a writ of prohibition issued to restrain D. from acting, or proceeding with the examination. On appeal from the order allowing the writ.—*Held*: D. was prohibited from acting as comr.—*MCKAY v. CAMPBELL* (1904), 36 N. S. R. 522.—*CAN.*

l. What amounts to bias.]—It does not necessarily follow because P., a police magistrate, committed S. for trial on a charge of misappropriating public moneys, that S., a justice of the peace, before whom P. was charged with assault on D., is so biased that he cannot act judicially as such justice.—*Re STUART*, *Ex p. PECK* (1909), 6 E. L. R. 274.—*CAN.*

m. —.]—A writ was asked against a magistrate to restrain him from hearing an information against appct., on the ground that the magistrate was attorney record for deft. in a pending suit in which appct. was *pltf.*; & on the ground that it would be to the advantage of the magistrate to impose a fine upon the appct., which fine might be utilised in order to secure the payment of his costs in the suit in which he was deft.'s attorney, in the event of the same being determined adversely to the appct.:—*Held*: (1) no suspicion of bias ought to be raised upon the facts alleged; (2) the pecuniary interest alleged was of too speculative a character to show reasonable probability of bias.—*Re MCKINNON* (1913), 12 K. L. R. 238.—*CAN.*

n. —.]—The mere fact that a

magistrate has been subpoenaed as a witness in a case, without showing that he can give any evidence, or that the magistrate has intimated that he would punish a certain offence by imprisonment, are no grounds for the issue of a writ of prohibition.—*HOLLAND v. MCCARTHY* (1903), 22 N. Z. L. R. 914.—*N.Z.*

PART VIII. SECT. 4, SUB-SECT. 6.

2199 i. General rule.]—*Re MCLEAN v. MCLEOD* (1871), 5 P. R. 467.—*CAN.*

2199 ii. —.]—The transgression of a rule of practice is no ground for prohibition.—*FEE v. MCILHARGREY* (1882), 9 P. R. 329.—*CAN.*

2199 iii. —.]—*Re MCKAY v. PALMER* (1887), 12 P. R. 219.—*CAN.*

2199 iv. —.]—*HONAN v. BAR OF MONTREAL* (1899), 30 S. C. R. 1.—*CAN.*

2199 v. —.]—*Re MAGER v. CANADIAN TIN PLATE DECORATING CO.* (1903), 24 C. L. T. 59; 7 O. L. R. 25; 2 O. W. R. 1114.—*CAN.*

2199 vi. —.]—*Re ANDERSON & KINRADE* (1908), 18 O. L. R. 382; 13 O. W. R. 1082; 14 Can. Crim. Cas. 448.—*CAN.*

o. Prohibition will lie for—Where party applying for prohibition prefu-

2200. —.]—What is procedure & therefore, if wrong, matter of appeal only, & what is jurisdiction & if wrongly asserted, matter for prohibition, it is almost impossible to define. The same thing will often strike different minds some as errors in procedure, some as excess of jurisdiction (LORD COLERIDGE, C.J.).

We have in this case the Ct. of Arches, a ct. of competent jurisdiction seized under letters of request, & through the medium of a properly instituted suit, with jurisdiction over resp. in respect of certain offences against ecclesiastical law. The mode in which that suit is to be conducted, the sentence which it is open to the judge to pronounce, & the means by which that sentence is to be enforced, are all, in the absence of statutory provision relating to these matters, to be regulated by the practice of the ct. itself, & in respect of which, if the judge errs, appeal & not prohibition would be the proper remedy, unless his error involves the doing of something which, in the words of Littledale, J., in *Ex p. Smyth* (No. 1185, post), is "contrary to the general laws of the land," or, to use the language of Lush, J., in the ct. below, is "so vicious as to violate some fundamental principle of justice" (THESIGER, L.J.).—*MARTIN v. MACKONCHIE* (1879), 4 Q. B. D. 697; 49 L. J. Q. B. 9; 41 L. T. 680; 43 J. P. 667, C. A.; *affd. generally, sub nom. MACKONCHIE v. PENZANCE* (LORD) (1881), 6 App. Cas. 424, H. L.

Annotations:—*Refd. Combe v. De la Bere* (1882), 22 Ch. D. 316; *Re London Scottish Permanent Bldg. Soc.* (1893), 63 L. J. Q. B. 112. *Mentd. Noble v. Ahier* (1886), 11 P. D. 158.

2201. Prohibition will not lie for.]—Prohibition cannot be granted against an inferior ct. on a mere question as to the form of the proceedings, for the superior ct. are not judges of their form.—*GLOBORN v. GLOBORN* (1629), *Het.* 149; 124 E. R. 414.

Annotations:—*Mentd. Saunders v. Saunders* (1847), 1 Rob. Eccl. 549; *Russell v. Russell*, [1897] A. C. 395.

2202. —.]—Prohibition does not lie against an inferior ct. where it has jurisdiction, though the proceedings are erroneous.—*ANON.* (1640), *March*, 92, pl. 152; 82 E. R. 426.

2203. —.]—**Remedy by way of appeal.]**—C. libelled against T. *ex officio* in the ecclesiastical ct. for incontinence without a citation, & deft. was excommunicated. On motion for a prohibition:—*Held*: where the ecclesiastical ct. had jurisdiction although they proceeded erroneously, no prohibition lay, but the remedy was by way of appeal.—*COUCH v. TOLL* (1641), *March*, 98; 82 E. R. 429.

Annotation:—*Refd. Martin v. Mackonochie* (1879), 4 Q. B. D. 697.

2204. —.]—Where a ct. has jurisdiction over a suit, mere irregularities in the proceedings in the suit do not afford any ground for a prohibition.

In Aug. 1850, a party was cited to appear in the consistorial ct. to answer in a suit instituted against him. He duly appeared, & was heard.

On June 9, 1851, two decrees were made in his absence, & without any previous notice thereof to him. On Sept. 2 he received notice of the decrees, & also that, if he did not obey them, he would be held in contempt:—*Held*: the want of notice of the decrees, even if required by the practice of the ecclesiastical ct., did not afford any ground for a prohibition, but the party's remedy was either by application to the ct. itself, or by appeal.—*Ex p. STORY* (1852), 8 Exch. 195; 22 L. J. Ex. 33; 20 L. T. O. S. 82; 16 J. P. 794; 1 W. R. 38; 155 E. R. 1317.

Annotations:—*Refd. Martin v. Mackonochie* (1879), 4 Q. B. D. 697. *Mentd. Combe v. Edwards* (1878), 3 P. D. 103.

2205. —.]—**No remedy by way of appeal—Irregularity not construed as act in excess of jurisdiction.]**—The Judge of the Mayor's Ct. awarded costs on the higher scale, but, in his certificate, omitted to state any ground for doing so:—*Held*: prohibition would not lie. The omission, although an irregularity in procedure, could not be construed into an act done without jurisdiction, & an act done by a judge within his jurisdiction did not become matter for prohibition because there happened to be no remedy by way of appeal.—*R. v. LONDON CORPN. & STOCK* (1893), 62 L. J. Q. B. 589; 69 L. T. 721; 37 Sol. Jo. 740; 5 R. 544, D. C.

Writ granted quousque.]—*See* Nos. 2112, 2121–2124, *ante*.

SECT. 5.—STAGE OF PROCEEDINGS AT WHICH WRIT GRANTED.

SUB-SECT. 1.—IN GENERAL.

2206. Whether after plea entered in inferior court.]—Prohibition does not lie to an inferior ct. after deft. has pleaded there, for by pleading deft. submits to the jurisdiction; but at the suit of the King prohibition lies though deft. has pleaded.—*ANON.* (1684), 1 Vern. 301; 23 E. R. 482.

2207. Whether before applicant has entered appearance—In court to be prohibited.]—Deft. cannot move for a prohibition before he has appeared in the ct. to which he prays the prohibition.—*COOK v. LICENCE* (1698), 1 Ld. Raym. 346; 91 E. R. 1128.

Annotations:—*Refd. Ex p. Farquharson* (1860), 9 W. R. 107; *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239.

2208. —.]—A prohibition shall not be granted on the merits until deft. below has appeared, & pltf. has exhibited his libel.—*TRANTER v. WATSON* (1703), 2 Ld. Raym. 931; 6 Mod. Rep. 11; 1 Salk. 35; 92 E. R. 122.

Annotations:—*Mentd. Pole v. Fitzgerald* (1750), *Willes*, 641; *Yates v. Hall* (1785), 1 Term Rep. 73; *The Grati-tudine* (1801), 3 Ch. Rob. 240.

2209. —.]—*WADSWORTH v. SPAIN* (QUEEN), *DE HABER v. PORTUGAL* (QUEEN), No. 2114, *ante*.

2210. Not after inferior court functus officio—

—CAN.

2203 iii. —.]—*R. v. MCGIL-LIVRAY* (1907), 2 F. L. R. 414; 41 N. S. R. 321.—CAN.

PART VIII. SECT. 5, SUB-SECT. 1.

b. General rule.]—If there is no want of jurisdiction apparent on the face of the proceedings, prohibition will not lie.—*Re SMART & O'REILLY* (1878), 7 P. R. 364.—CAN.

c. —.]—*ELLIOTT v. MAY* (1896), 11 Man. L. R. 306.—CAN.

d. —.]—*Re SIMPSON v. WIDRIG* (1910), 12 W. L. R. 643; 15 B. C. R. 5.—CAN.

died by procedure.]—*Re BANK OF OTTAWA v. WADE* (1891), 21 O. R. 486.—CAN.

p. —.]—*Re FORBES v. MICHIGAN CENTRAL RY. CO.* (1893), 20 A. R. 584.—CAN.

q. Prohibition will not lie for—Failure to proceed by next friend.]—*Ex p. TOWNSEND* (1906), 6 S. R. N. S. W. 260.—AUS.

r. —.]—*Giving leave to amend.]*—*Re HIGGINBOTHAM v. MOORE* (1861), 21 U. C. R. 326.—CAN.

s. —.]—*Calling jury contrary to statute.]*—*Re BROWN & WALLACE* (1872), 6 P. R. 1.—CAN.

t. —.]—*Proceeding on order founded on defective affidavit.]*—*Re SATO v. HUBBARD* (1881), 8 P. R. 445.—CAN.

u. —.]—*Issue of blank summons—Afterwards filled up by bailiff under clerk's instructions.]*—*Re GEROW v. HOGLE* (1898), 28 O. R. 405.—CAN.

2203 i. —.]—*Remedy by way of appeal.]*—A matter of practice, which, if irregular, may be corrected upon appeal, is not ground for prohibition especially after judgment has been given.—*R. v. BEVERIDGE* (1840), 1 Kerr, 58.—CAN.

2203 ii. —.]—*DOIDGE v. MIMMS* (1899), 12 Man. L. R. 618.

Sect. 5.—Stage of proceedings at which writ granted: Sub-sects. 1 & 2.]

Court-martial.]—A prohibition cannot issue to a ct.-martial, after sentence has been ratified by the King & carried into execution.—*Re POE* (1833), 5 B. & Ad. 681; 2 Nev. & M. K. B. 636; 110 E. R. 942; *sub nom. Ex p. POE*, 3 L. J. K. B. 33.

Annotations:—Folld. Re Clifford & O'Sullivan, [1921] 2 A. C. 570. *Reid. Re York* (1841), 2 Q. B. 1; *Kimpton v. Willey* (1850), 14 J. P. 386; *Heyworth v. London Corp'n. & Rhodes* (1884), Cab. & El. 312. *Mentd. Re Mansergh* (1861), 1 B. & S. 400; *Re Tufnell* (1876), 3 Ch. D. 164; *Grant v. Secretary of State for India* (1877), 2 C. P. D. 445.

2211. ———.]—*Re CLIFFORD & O'SULLIVAN*, No. 2287, *post*.

2212. Not until jurisdiction actually exceeded.]—Where, in the consistory ct. a decree was given in nullification of a church rate, on the ground of its being retrospective, & the Ct. of Arches reversed this decision, & the reversal was appealed against to the Judicial Committee of the Privy Council:—*Held*: applt. was not entitled to a prohibition on the mere ground that the rate was bad, it not appearing that anything had been done by the Judicial Committee. *Seemle*: prohibition would be granted if it appeared that the Judicial Committee was proceeding beyond its jurisdiction.—*CHESTERTON v. FARLAR* (1838), 7 Ad. & El. 713; 7 L. J. Q. B. 66; 112 E. R. 638; *sub nom. R. v. JUDICIAL COMMITTEE OF THE PRIVY COUNCIL*, 3 Nev. & P. K. B. 15; 2 Jur. 394; *sub nom. R. v. CHESTERTON*, 1 Will. Woll. & H. 19; 2 J. P. 21.

Annotations:—Consd. Wadsworth v. Spain (Queen) (1851), 17 Q. B. 171. *Mentd. R. v. Poole* (Corp'n. (1838), 2 J. P. 84; *Hornchurch v. Pigott* (1842), 6 Jur. 608; *Jones v. Johnson* (1850), 5 Exch. 862.

2213. ———.]—The ct. will not grant a prospective prohibition on a suggestion that an inferior ct. will not adopt a right course of proceeding on a matter within its jurisdiction.—*Ex p. St. PANCRAS PARISH (AUDITORS)* (1838), 6 Dowl. 531; 2 Jur. 920; *sub nom. R. v. MIDDLESEX J.J.*, *Ex p. St. PANCRAS PARISH (AUDITORS)*, 1 Will. Woll. & H. 183.

2214. ———.]—Where the matter is within the jurisdiction of an ecclesiastical ct. this ct. will not interfere by prohibition to prevent an adjudication upon it.—*HALLOCK v. CAMBRIDGE UNIVERSITY* (1841), 1 Q. B. 593; 9 Dowl. 583; 1 Gal. & Dav. 100; 10 L. J. Q. B. 206; 6 Jur. 10; 113 E. R. 1258.

Annotation:—Consd. R. v. Twiss (1869), L. R. 4 Q. B. 407.

2215. ———.]—*R. v. ABERDARE CANAL CO.* (1850), 14 Q. B. 854; 4 New Mag. Cas. 123; 19 L. J. Q. B. 251; 15 L. T. O. S. 453; 14 J. P. 497; 14 Jur. 735; 117 E. R. 328.

Annotation:—Reid. R. v. Salford Overseers (1852), 16 Jur. 907; *R. v. Woodhouse*, [1906] 2 K. B. 501. *Mentd. Wildes v. Russell* (1866), Har. & Ruth. 689.

2216. ———.]—The rules of an industrial society

2212 i. Not until jurisdiction actually exceeded.]—*Re BUCHANAN* (1913), 26 W. L. R. 447.—*CAN.*

e. Not until inquiry to ascertain jurisdiction.]—If the jurisdiction of an inferior ct. is denied at the trial of a case, the judge may inquire into the facts so as to ascertain whether or not there be jurisdiction; & prohibition cannot be granted, until after such inquiry.—*DIXON v. SNARR* (1876), 6 P. R. 336.—*CAN.*

PART VIII. SECT. 5, SUB-SECT. 2.

2217 i. At any stage.]—Where the want of jurisdiction appears on the face of the proceedings, & there are proceedings under an order not yet completed, the writ ought to issue.—

provided, that in case of disputes between a member & the society, or of complaint against an officer, the matter should be settled by arbn. P., a member, was appointed a salesman of the society, & after he had resigned his appointment disputes arose as to his accounts, which the society proceeded to settle by arbn., & an award having been made against P., the society proceeded to enforce it, under 18 & 19 Vict. c. 63, s. 41, by issuing a plaint in the county ct., on which P., before the case had been brought before the judge of the county ct., applied for a prohibition, on the ground that this was not a matter which could be settled by arbn.:—*Held*: the application was premature, as the county ct. was the tribunal to decide, in the first instance, whether, on the facts, the matter was such as could be decided by arbn.—*SKIPTON INDUSTRIAL CO-OPERATIVE SOCIETY, LTD. v. PRINCE* (1864), 33 L. J. Q. B. 323; 11 Jur. N. S. 11.

In county court cases.]—See COUNTY COURTS, Vol. XIII., p. 547, Nos. 1024-1035.

After waiver or acquiescence.]—See Sect. 7, *post*.

SUB-SECT. 2.—WANT OF JURISDICTION APPARENT ON RECORD.

2217. At any stage.]—You are never too late [for a prohibition] where it is *pro defectu jurisdictionis* (*per* CUR.).—*OFFLEY v. WHITEHALL* (1717), Bumb. 17; 145 E. R. 579.

Annotation:—Reid. Gould v. Gapper (1804), 5 East, 315.

2218. ———.]—*BURDER v. VELEY*, No. 2109, *ante*.

2219. ———.]—*Re LONDON SCOTTISH PERMANENT BUILDING SOCIETY*, No. 2168, *ante*.

2220. Before judgment.]—Where a *modus* is pleaded in an ecclesiastical ct., a prohibition may be granted at any time before final sentence. A prohibition will be granted to a Ct. of Appeal where it appears that they have no jurisdiction over the subject-matter, even after they have remitted the suit to the ct. below, & awarded costs against applt., & though the party applying for a prohibition appealed to that ct.

It is very clear that an ecclesiastical ct. cannot proceed in any cause where they have not an original jurisdiction of the subject-matter, & if they do, a prohibition goes of course, or where any incidental matter intervenes by which they are ousted of their original jurisdiction. Now I take that to be the case here. The instant the *modus* was pleaded, their jurisdiction was at an end (*ASHURST, J.*).—*DARBY v. COSENS* (1787), 1 Term Rep. 552; 99 E. R. 1247.

Annotations:—Reid. Byerley v. Windus (1826), 5 B. & C. 1; *Re Poe* (1833), 5 B. & Ad. 681; *Bodenham v. Ricketts* (1836), 5 Dowl. 120.

2221. ———.]—*BYERLEY v. WINDUS* (1826), 5 B.

—N.Z.

2217 v. — *Whether right to prohibition affected by prospect of amendment to information.]*—An application for a writ of prohibition based upon alleged defects on the face of the proceedings before a magistrate should not be affected by the prospect of an amendment being made to the information by which such proceedings were begun.—*Re ARMY & NAVY VETERANS OF CANADA, Re GOVERNMENT LIQUOR ACT*, [1921] 3 W. W. R. 29.—*CAN.*

2220 i. Before judgment.]—Upon proceedings being taken in a ct. which has not jurisdiction, deft. is entitled to prohibition immediately upon action being brought.—*Re SUMMERFELD v. WORTS* (1886), 12 O. R. 48.—*CAN.*

KAVANNAGH v. HERB (1907), 9 W. A. L. R. 121.—*AUS.*

2217 ii. ———.]—If the want of jurisdiction of an inferior ct. is apparent on the face of the proceedings, deft. may move at any time for prohibition; but if it does not so appear he should first raise the objection in the inferior ct.—*WRIGHT v. ARNOLD* (1889), 6 Man. L. R. 1.—*CAN.*

2217 iii. ———.]—*CAMOUSUN COMMERCIAL CO., LTD. v. GARITSON & BLOSTER* (1914), 20 B. C. R. 448.—*CAN.*

2217 iv. ———.]—Prohibition may issue if a defect in jurisdiction is shown on the face of the proceedings, even though the judge found facts which would give himself jurisdiction.—*TOWN v. STEVENS* (1899), 17 N. Z. L. R. 828.

& C. 1; 7 Dow. & Ry. K. B. 564; 4 L. J. O. S. K. B. 102; 108 E. R. 1.

Annotations.—*Consd.* Chesterton v. Farlar (1838), 7 Ad. & El. 713. *Reid.* Bodenham v. Ricketts (1836), 5 Dowl. 120; Hall v. Maule (1838), 3 Nev. & P. K. B. 459; Hallack v. Cambridge University (1841), 1 Q. B. 593; London Corpn. v. Cox (1867), L. R. 2, H. L. 239. *Mentd.* Taylor v. Timson (1888), 20 Q. B. D. 671.

2222. —. —.]—*BARTLEY v. PATE* (1849), 14 J. P. Jo. 36.

2223. —. —.]—*BOURNE v. SOUTH EASTERN RY. Co.* (1856), 26 L. T. O. S. 196.

2224. After judgment.—(1) A prohibition was granted without notice upon suggestion of a *modus*, though cts. did not use to grant prohibitions without notice.

(2) No prohibition will lie after sentence where the Spiritual Ct. has jurisdiction of the libel, but it is otherwise where it has no jurisdiction.—*ANON.* (1673), 1 Freem. K. B. 78; 89 E. R. 58.

2225. —. —.]—*CHICKHAM v. DICKSON* (1697), 12 Mod. Rep. 132; Comb. 448; 88 E. R. 1215.

2226. —. —.]—*GARDNER v. BOOTH* (1698), 2 Salk. 548; 12 Mod. Rep. 196; 91 E. R. 464.

Annotations.—*Reid.* Pawson v. Scott (1755), Say. 176; Full v. Hutchins (1776), 2 Cowp. 422; Burder v. Veley (1840), 12 Ad. & El. 233; London Corpn. v. Cox (1867), L. R. 2 H. L. 239.

2227. —. —.]—*ANON.* (1702), 11 Mod. Rep. 5; 88 E. R. 848.

2228. —. —.]—*ANON.* (1703), 7 Mod. Rep. 137; 87 E. R. 1147.

2229. —. —.]—*ASGILL v. HUNT* (1710), 10 Mod. Rep. 439; 88 E. R. 800.

2230. —. —.]—*ANON.* (1723), 8 Mod. Rep. 194; 88 E. R. 141.

2231. —. —.]—*R. v. LINCOLN (BP.)* (1732), 2 Barn. K. B. 173; 94 E. R. 429.

2232. —. —.]—*SMITH v. LANGLEY* (1736), Lee temp. Hard. 317; 95 E. R. 206.

2233. —. —.]—*DAWSON v. WILKINSON*, No. 2359, post.

2234. —. —.]—*PAXTON v. KNIGHT* (1757), 1 Burr. 314; 2 Keny. 14; 97 E. R. 328.

Annotations.—*Reid.* Full v. Hutchins (1776), 2 Cowp. 422; Burder v. Veley (1840), 12 Ad. & El. 233.

2235. —. —.]—*SYMES v. SYMES* (1759), 2 Burr. 813; 97 E. R. 576.

Annotation.—*Reid.* Loman v. Goulty (1789), 3 Term Rep. 3.

2236. —. —.]—*Ground for prohibition not apparent on face of proceedings.*—*BUGGIN v. BENNETT*, No. 2355, post.

2237. —. —.]—The jurisdiction of the Ecclesiastical Ct. is not taken away by Ecclesiastical Cts. Act, 1813 (c. 127), s. 7, in all cases where the rate is under £10, but only in those cases where the validity of the rate & the liability of the person are admitted & no prohibition will lie to that ct. after sentence, in a suit for less than £10, as no want of jurisdiction would appear upon the face of the proceedings arising from the mere fact of its being for less than £10.—*RICKETTS v. BODENHAM* (1836), 4 Ad. & El. 433; 5 L. J. K. B. 102; 111 E. R. 850; *sub nom.* *BODENHAM v. RICKETTS*, 1 Har. & W. 753; 6 Nev. & M. K. B. 170, 537.

Annotations.—*Reid.* R. v. Bath Court of Requests Comrs., *Re Roberts v. Humby* (1837), 7 L. J. Ex. 45; Richards v. Dyke (1842), 3 Q. B. 256; James v. South Western Ry. (1872), L. R. 7 Exch. 287; Farquharson v. Morgan, [1894] 1 Q. B. 552. *Mentd.* White v. Beard (1839), 2 Curt.

2224 i. After judgment.—*COMMERCIAL BANKING CO. v. BALGARNIE* (1864), 3 N. S. W. S. C. R. 27.—*AUS.*

2224 ii. —. —.]—*Where notice of objection to jurisdiction filed before judgment.*—Def. filed a notice disputing the jurisdiction of a ct. in M., but did not appear at the trial, & judgment was given against him. Subsequently a transcript of the judgment was transmitted to a ct. in S.:—*Held:* the judgment did

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not thereby become a judgment of the S. ct., & prohibition to the M. ct. was granted after such transmission.—*RE ELLIOTT v. NORRIS* (1889), 17 O. R. 78.—*CAN.*

2224 iii. —. —.]—*Re KERR v. SMITH* (1894), 24 O. R. 473.—*CAN.*

2224 iv. —. —.]—Prohibition may issue after sentence if it be shown that the jurisdiction of the inferior ct. has

480; *Re Baines* (1840), Cr. & Ph. 31; *Pease v. Chaytor* (1863), 3 B. & S. 620; *R. v. Somersetshire JJ.* (1864), 29 J. P. 197; *R. v. Pedlar* (1865), 12 L. T. 17.

2238. —. —.]—Where matters which are triable at common law arise incidentally in a case & the Ecclesiastical Ct. has jurisdiction in the principal point this ct. will not grant a prohibition to stay trial, unless the ct. proceeded to try contrary to the principles & course of the common law. The distinction in respect of cases where a prohibition does or does not lie after sentence is this, if it appears on the face of the libel that the Ecclesiastical Ct. has no jurisdiction of the cause a prohibition shall go, because there *interest reipublicae* that they should not encroach upon the jurisdiction of the temporal cts. (LORD MANSFIELD, C.J.).—*FULL v. HUTCHINS* (1776), 2 Cowp. 422; 98 E. R. 1165.

Annotations.—*Distd.* Heyworth v. London Corpn. & Rhodes (1884), Cab. & El. 312. *Reid.* Shatter v. Friend (1890), 1 Show. 158, 172; Camden v. Home (1791), 4 Term Rep. 382; Gould v. Gapper (1804), 5 East, 311; Burder v. Veley (1840), 12 Ad. & El. 233; Evans v. Gwyn (1844), 5 Q. B. 844.

2239. —. —.]—*BLACQUIERE v. HAWKINS* (1780), 1 Doug. K. B. 378; 99 E. R. 244.

Annotations.—*Reid.* London Corpn. v. Cox (1867), L. R. 2 H. L. 239. *Mentd.* Piper v. Chaffell (1845), 14 M. & W. 624; *Re Roux v. Merton*, R. v. London Corpn. (1872), 27 L. T. 61.

2240. —. —.]—*Ex p. COWAN* (1819), 3 B. & Ald. 123; 106 E. R. 608.

Annotations.—*Reid.* Forster v. Forster & Berridge (1863), 8 L. T. 661; Combe v. De La Bere (1882), 22 Ch. D. 316; Heyworth v. London Corpn. & Rhodes (1884), Cab. & El. 312. *Mentd.* *Re Heath, Ex p. Heath* (1832), 2 Deac. & Ch. 140; *Re Battine* (1833), 1 Nev. & M. K. B. 579; *Re Thompson* (1849), 14 L. T. O. S. 186.

2241. —. —.]—*ROBERTS v. HUMBY*, No. 2277, post.

2242. —. —.]—*BRIDGE v. BRANCH*, No. 2349, post.

2243. —. —.]—*Before execution.*—A prohibition was granted on the ground of no jurisdiction although judgment had been given eight years before but no execution issued.—*KEECH v. POTTS* (1661), 1 Keb. 3; 83 E. R. 775.

2244. —. —.]—*DENTON v. MARSHALL* (1863), 1 H. & C. 654; 1 New Rep. 242; 32 L. J. Ex. 89; 7 L. T. 689; 27 J. P. 345; 9 Jur. N. S. 337; 11 W. R. 268; 158 E. R. 1046.

2245. —. —.]—*Although applicant mistakenly acquiesced in jurisdiction.*—A representation against D. under Public Worship Regulation Act, 1874 (c. 85), s. 8, was sent to the Bishop of London & was by him duly transmitted to the Archbishop of Canterbury. The latter thereupon by instrument of requisition, required the judge to hear the matters of representation "at any place in London or Westminster, or within the diocese of London, as you may deem fit." The judge heard the case in the public library at Lambeth Palace, which is neither in London, Westminster, nor the diocese of London, & gave judgment against D., who had notice of the proceedings but did not appear. A monition & subsequently an inhibition were issued against D., & his benefice was sequestered. D. did not know that the patronage of his living had been transferred to the bishop until after the sentence had been given against him & the monition issued. After D.'s sequestration & nine months after the sentence he applied

been exceeded.—*HICKSON v. WILSON* (1897), 2 Terr. L. R. 426.—*CAN.*

2224 v. —. —.]—Where the objection to the jurisdiction of an inferior ct. appears on the face of the proceedings prohibition lies at any time, even after judgment or sentence, in spite of laches or acquiescence on the part of appt.—*R. v. JACK* (1915), 49 N. S. R. 238.—*CAN.*

Sect. 5.—Stage of proceedings at which writ granted: Sub-sects. 2 & 3, A. & B. Sect. 6.]

for a prohibition to the Archdeacon Ct.:—*Held*: the prohibition must be granted, for the bishop was patron of the benefice within s. 16 of the Act & was disqualified from acting in the matters of the representation, & D. had not acquiesced in the proceedings & his application for a prohibition was not too late.

We should before the Jud. Acts have required appct. to declare in prohibition in order that our judgment might be reviewed in a Ct. of Appeal. But that proceeding is now unnecessary as an appeal lies against the judgment with the same advantage to all parties & without the delay & expense of pleadings (*per CUR.*).—*SERJEANT v. DALE* (1877), 2 Q. B. D. 558; 46 L. J. Q. B. 781; 37 L. T. 153; 41 J. P. 694, D. C. *Annotations*:—*Refd.* *Hudson v. Tooth* (1877), 3 Q. B. D. 46; *Toomer v. L. C. & D. Ry.* (1877), 2 Ex. D. 450. *Mentd.* *Tolpuitt v. Mole*, [1911] 1 K. B. 87.

2246. After appeal.—*MORTON'S CASE*, No. 2102, *ante*.

2247. —.]—*GORHAM v. EXETER (BP.)* (1850), 15 Q. B. 52; *Brod. & F.* 64; 7 State Tr. N. S. 1071; 7 Notes of Cases Supp. lxvi.; 19 L. J. Q. B. 279; 15 L. T. O. S. 87; 14 Jur. 480; 117 E. R. 377; *sub nom.* *R. v. FUST*, 14 J. P. 258; *subsequent proceedings*, 10 C. B. 102; 5 Exch. 630.

Annotations:—*Refd.* *Kimpton v. Willey* (1850), 19 L. J. C. P. 269. *Mentd.* *Re Barnard* (1852), 2 De G. M. & G. 359; *Ridgale v. Clifton* (1877), 36 L. T. 865; *Lord Advocate v. Walker Trustees*, [1913] A. C. 95; *Associated Newspapers v. London Corpn.*, [1916] 2 A. C. 429.

2248. —.]—*HARRINGTON (EARL) v. RAMSAY* (1853), 8 Exch. 879; 22 L. J. Ex. 326; 21 L. T. O. S. 187; 17 J. P. 440; 1 W. R. 456; 1 C. L. R. 1038; 155 E. R. 1610; *subsequent proceedings, sub nom. Re HARRINGTON (EARL)*, 2 E. & B. 669.

Annotation:—*Refd.* *Barker v. Palmer* (1881), 30 W. R. 59.

SUB-SECT. 3.—WANT OF JURISDICTION NOT APPARENT ON RECORD.

A. Before Judgment.

2249. Whether before or after plea to jurisdiction.—A prohibition may issue against a suit in an inferior ct. on an affidavit that the ct. has no jurisdiction before a plea is entered to the jurisdiction.—*TURNER v. WESTON* (1688), 2 Lut. 1023; 125 E. R. 570.

Annotation:—*Refd.* *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239.

2250. —.]—The ct. will not grant a prohibition to an inferior ct. on a suggestion that the matter is out of their jurisdiction, unless a plea be pleaded to their jurisdiction before imparlance & refused.—*CLERK v. ANDREWS* (1689), 1 Show. 9; 89 E. R. 414; *sub nom.* *ANDREWS v. CLERKE*, Carth. 25; Comb. 109.

Annotations:—*Refd.* *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239. *Mentd.* *Westoby v. Day* (1853), 1 C. L. R. 1057; *London Joint Stock Bank v. London Corpn.* (1875), 1 C. P. D. 1.

2251. —.]—Until proceedings after the plea have been had below, the ct. will not grant a prohibition.—*BOROUGH v. FOWLER* (1756), 1 Keny. 354; 96 E. R. 1019.

2252. Whether after plea to issue.—*ANON.*, No. 2206, *ante*.

PART VIII. SECT. 5, SUB-SECT. 3.—B.

2257 i. General rule.—For a defect not appearing on the face of the proceedings, prohibition will not be granted.—*Re HAWKINS v. BATZOLD* (1901), 22 C. L. T. 14; 2 O. L. R. 704.—*CAN.*

i. Prohibition will not lie—Where no injustice done.—*Re SOVEREIGN MITT GLOVE & ROBE CO. v. CAMERON* (1915), 9 O. W. N. 278; 35 O. L. R. 143.—*CAN.*

g. Prohibition discretionary—Where facts not brought forward until after

2253. — *Before trial.*—*WADSWORTH v. SPAIN (QUEEN), DE HABER v. PORTUGAL (QUEEN)*, No. 2114, *ante*.

2254. Whenever proceedings disclose want of jurisdiction.—A prohibition was granted on an affidavit that debt. to a libel for tithes in kind in the spiritual ct. answered on oath or pleaded a *modus*, without its appearing that the *modus* was regularly pleaded below, so as to be put in issue there.—*FRENCH v. TRASK* (1808), 10 East, 348; 103 E. R. 807; *subsequent proceedings, sub nom. TRASK v. FRENCH* (1812), 15 East, 574.

Annotations:—*Consd.* *Beauchamp v. Turner* (1839), 10 Ad. & El. 218. *Refd.* *Byerley v. Windus* (1826), 5 B. & C. 1; *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239.

2255. —.]—*LONDON CORPN. v. COX*, No. 2112, *ante*.

2256. — *Before execution.*—*HEYWORTH v. LONDON CORPN. & RHODES*, No. 2272, *post*.

B. After Judgment.

2257. General rule.—Prohibition will not issue after judgment & execution, in a case where the defect does not appear on the face of the proceedings.

Where two complaints had been entered on the same day by the same pltf. against the same debt. for goods sold & delivered; & judgment had been given & execution levied but not satisfied:—*Held*: this was a sufficient defect apparent on the face of the proceedings to enable the superior ct. to issue a prohibition against proceeding in the second action.—*ACWORTH v. DOWSETT* (1848), Cox, M. & H. 118; *sub nom.* *ACKWORTH v. DOWSETT*, 11 L. T. O. S. 152; 12 J. P. Jo. 324.

2258. Prohibition will not lie.—It is too late after sentence to apply for a prohibition (*DODDERIDGE, J.*).—*HARRIS v. DILWORTHY* (1627), Palm. 423; 81 E. R. 1153.

2259. — *Unless proceedings disclose want of jurisdiction.*—*ANON.* (1610), 12 Co. Rep. 77; 77 E. R. 1355.

Annotations:—*Refd.* *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239; *Combe v. De La Bere* (1882), 22 Ch. D. 316. *Mentd.* *Morton's Case* (1661), 1 Sid. 65.

2260. —.]—*WALKER v. ADAMS* (1667), 1 Sid. 331; 82 E. R. 1139.

2261. —.]—*SHERMOULIN v. SANDS* (1697), 1 Ld. Raym. 271; 91 E. R. 1078.

2262. —.]—*BARKER v. WHARTON* (1726), 1 Barn. K. B. 2; 91 E. R. 2; *sub nom.* *BARBER & PHILPOT v. WHARTON*, 2 Ld. Raym. 1452.

2263. —.]—*GOULD v. GAPPER*, No. 2187, *ante*.

2264. —.]—*RICARDO v. MAIDENHEAD LOCAL BOARD OF HEALTH* (1857), 2 H. & N. 257; 27 L. J. M. C. 73; 29 L. T. O. S. 165; 21 J. P. 359; 5 W. R. 691; 157 E. R. 107.

Annotation:—*Refd.* *Denton v. Marshall* (1863), 7 L. T. 689.

2265. — *If inferior court has in fact jurisdiction.*—*ANON.*, No. 2224, *ante*.

2266. —.]—*ANON.* (1698), 12 Mod. Rep. 236; 88 E. R. 1286.

2267. —.]—*OWEN v. HUGHES* (1720), Fortes. Rep. 199; 92 E. R. 817.

2268. —.]—*READ v. DEATARY* (1734), 7 Mod. Rep. 199; *Ridg. temp. H.* 42; 87 E. R. 1188; *sub nom.* *REED v. DOLTERY*, 2 Barn. K. B. 392.

Annotation:—*Refd.* *Patten v. Castleman* (1753), 1 Lee. 387.

judgment.—Where the inferior ct. has jurisdiction, except from the existence of undisclosed facts within the knowledge of debt., who allows the ct. to proceed to judgment without disclosing the want of jurisdiction, the interference of the superior ct. by pro-

2269. — — —.]—FULL v. HUTCHINS, No. 2238, *ante*.

2270. — — —.]—PEARS v. WILSON (1851), 6 Exch. 833; 20 L. J. Ex. 381; 18 L. T. O. S. 52; 16 J. P. 7; 15 Jur. 932; 155 E. R. 782; *sub nom.* PEARCE v. WILLIAMS, 2 L. M. & P. 515.
Annotations:—*Mentd.* Fuller v. Mackay (1853), 2 E. & B. 573; Hewston v. Phillips (1856), 11 Exch. 699.

2271. — — —.]—COMBE v. DE LA BERE (1882), 22 Ch. D. 316; 48 L. T. 298; 31 W. R. 258, C. A.

2272. — — —.]—Where in an action in an inferior ct., upon the facts disclosed at the trial & relied on by plff., a clear want of jurisdiction over the cause is for the first time made apparent, deft. has a right, at any time before execution has been completed, to claim a prohibition to restrain all further proceedings, & to prohibit any further excess of jurisdiction.

Prohibition will not go to an inferior ct. if such ct. had in fact jurisdiction over the cause, although the facts in evidence at the trial in the inferior ct. were not such as to give that ct. jurisdiction.—HEYWORTH v. LONDON CORPN. & RHODES (1884), 1 Cab. & El. 312.

2273. — — —.]—If no prior objection taken to jurisdiction.]—A question arose whether after a verdict, when the party had admitted the jurisdiction by pleading, & had stood trial, it was not too late to come for a prohibition:—*Held*: the prohibition must be refused on the ground that the party had neglected to plead to the jurisdiction or to move for a prohibition till after verdict & judgment.—ENDIKE v. STEED (1878), 1 Freem. K. B. 294; 89 E. R. 213; *sub nom.* MENDYKE v. STINT, 2 Mod. Rep. 271; *sub nom.* NENDICK v. STUIT, 3 Keb. 831, 849.

Annotations:—*Mentd.* Higginson v. Shelf (1708), 1 Com. 153; Frith v. Guppy (1866), L. R. 2 C. P. 32.

2274. — — —.]—COKE v. HAWKINS (1691), 12 Mod. Rep. 13; 88 E. R. 1133.

2275. — — —.]—KING v. JEWELL (1776), 7 Ves. 258; 32 E. R. 105.

Annotation:—*Refd.* London Corpn. v. Cox (1867), 16 W. R. 44.

2276. — — —.]—BROWN v. IRVIN (1776), 7 Ves. 258; 32 E. R. 104.

Annotation:—*Refd.* London Corpn. v. Cox (1867), 16 W. R. 44.

2277. — — —.]—& delay in application.]—Where the want of jurisdiction appears on the face of the process, the ct. will grant a prohibition after sentence.

Semble: it will also grant it, though the want of jurisdiction does not so appear, when the party has had no opportunity of applying earlier to the superior ct., & has not acquiesced in the proceedings.—ROBERTS v. HUMBY (1837), 3 M. & W. 120; 6 Dowl. 82; Murp. & H. 331; 150 E. R. 1081; *sub nom.* R. v. BATH COURT OF REQUESTS COMRS., ROBERTS v. HUMBY, 7 L. J. Ex. 45.

Annotations:—*Consd.* Yates v. Palmer (1849), 14 L. T. O. S. 109. *Refd.* Kington v. Willey (1850), 9 C. B. 719; Denton v. Marshall (1863), 1 H. & C. 654; London Corpn. v. Cox (1867), L. R. 2 H. L. 239; R. v. Shropshire County Court Judge (1887), 20 Q. B. D. 242; Farquharson v. Morgan, [1894] 1 Q. B. 552. *Mentd.* Re Lenaghan, Robinson v. Lenaghan (1848), 2 Exch. 333; Read v. Lincoln Bp. (1889), 14 P. D. 88.

2278. — — —.]—*Re* CHELSEA WATERWORKS

hibition is discretionary.—ARCHIBALD v. BUSHEY (1878), 7 P. R. 304.—CAN.

h. — — —.]—FRIENDLY v. NEEDLER (1884), 10 P. R. 267.—CAN.

k. — — —.]—Where the want of jurisdiction is not apparent & the facts are not brought forward until after judgment, the granting of prohibition is in the discretion of the

ct.—RUTHERFORD v. WALLS (1892), 8 Man. L. R. 96.—CAN.

l. — — —.]—Where the want of jurisdiction of an inferior ct. does not appear on the face of the proceedings & the application for prohibition is not made until after the judgment or verdict in that ct., appt. is not as of right entitled to the writ, but the

Co., *Ex p.* PHILLIPS (1855), 10 Exch. 731; 24 L. J. Ex. 79; 24 L. T. O. S. 223; 19 J. P. 103; 1 Jur. N. S. 143; 3 W. R. 174; 3 C. L. R. 329; 156 E. R. 635.

2279. — — —.]—*Ex p.* MICHAEL (1872), L. R. 7 Q. B. 658; 41 L. J. Q. B. 349; 26 L. T. 871; 1 Asp. M. L. C. 337.

2280. — — —.]—BROAD v. PERKINS, No. 2113, *ante*.

2281. — — —.]—Unless good reason given.]—LONDON CORPN. v. COX, No. 2112, *ante*.

SECT. 6.—TO WHAT TRIBUNALS GRANTED.

2282. *General rule*.]—This Ct. hath power to prohibit all other particular cts., which do hold plea by reason of their particular jurisdictions, or if they have a general jurisdiction by Act of Parliament, if they do exceed their authority they are by the common law to be prohibited by this ct. And this so by the common law that all particular cts. either in respect of the place, or of the causes to be there determined, if they do exceed their authority they are by the common law to be prohibited by this ct. (COKE, C.J.).—WARNER v. SUCKERMAN & COATES (1615), 3 Bulst. 119; 81 E. R. 101; *sub nom.* COATS & SUCKERMAN v. WARNER, 1 Roll. Rep. 252.

Annotation:—*Refd.* Forster v. Forester & Berridge (1863), 4 B. & S. 187.

2283. — — —.]—The ct. may grant a prohibition to a ct. pretended & also where it is doubtful whether it will lie or not.—ANON. (1701), 12 Mod. Rep. 415; 88 E. R. 1440.

2284. — — —.]—Naval Cts.—Martial, Military Cts.—Martial, Cts. of Admiralty, Cts. of Prize are all liable to the controlling authority which the cts. at Westminster Hall have from time to time exercised for the purpose of preventing them from exceeding the jurisdiction given to them; the general ground of prohibition being an excess of jurisdiction when they assume a power to act in matters not within their cognizance (LORD LOUGHBOROUGH, C.J.).—GRANT v. GOULD (1792), 2 Hy. Bl. 69; 126 E. R. 434.

Annotations:—*Consd.* R. v. Hertford (1860), 24 J. P. 628; Dawkins v. Paulot (1869), L. R. 5 Q. B. 94. *Refd.* *Re* Poe (1833), 5 B. & Ad. 681; *Re* Mansergh (1861), 1 B. & S. 400; R. v. McCarthy (1866), 14 W. R. 918; Dawkins v. Rokeby (1873), L. R. 8 Q. B. 255; R. v. Army Council, *Ex p.* Ravenscroft, [1917] 2 K. B. 504; Heddon v. Evans (1919), 35 T. L. R. 642. *Mentd.* Dawkins v. Rokeby (1866), 4 F. & F. 806; Fraser v. Balfour (1918), 87 L. J. K. B. 1116.

2285. — — —.]—Criminal & civil courts.]—Prohibition lies to a ct. of criminal, no less than to one of civil, jurisdiction.

A rule for a prohibition was made absolute prohibiting a coroner from further holding an inquisition respecting the origin of a fire in the city of Manchester.—R. v. HERFORD (1860), 3 E. & E. 115; 29 L. J. Q. B. 249; 2 L. T. 459; 24 J. P. 628; 6 Jur. N. S. 750; 8 W. R. 579; 121 E. R. 387.

2286. — — —.]—Court with limited jurisdiction.]—*Held*: prohibition still lies to the Ct. of Admty., although it possesses by statute some of the powers of a superior ct.; & plff. is entitled to have the

superior ct. has a discretion to refuse it.—MAXWELL v. CLARK (1895), 10 Man. L. R. 406.—CAN.

PART VIII. SECT. 6.

2286 i. *General rule*.—Court with limited jurisdiction.]—Prohibition will lie to a ct. of limited jurisdiction although it be a superior ct.—*Ex p.*

Sect. 6.—To what tribunals granted. Sect. 7.]

prohibition issued, inasmuch as the jurisdiction given to the ct. by Admiralty Ct. Act, 1861 (c. 10), s. 13, could only be exercised when "the ship or proceeds thereof" were under arrest, & in this case neither the ship nor the proceeds, nor anything equivalent to her proceeds, were at any time under arrest.

I do not call the Ct. of Admiralty an inferior ct. but treating it as a superior ct. with a limited jurisdiction, it is subject to prohibition, though superior in name, like many other cts. nominally superior but still liable to prohibition, their jurisdiction being limited (WILLES, J.).—JAMES v. SOUTH WESTERN RY. CO. (1872), L. R. 7 Exch. 287; 41 L. J. Ex. 186; 27 L. T. 382; 21 W. R. 25; 1 Asp. M. L. C. 428, Ex. Ch.

Annotation.—*Mentd.* The Franconia (1877), 2 P. D. 163.

2287. — Judicial tribunals.—By a proclamation dated Dec. 10, 1920, the Lord-Lieutenant of Ireland proclaimed certain counties, including County Cork, to be under martial law. By a proclamation dated Dec. 12, 1920, the Commander-in-Chief in Ireland declared the unauthorised carrying of arms to be punishable by death, & he authorised the general officer commanding in Cork to issue orders for the holding of military cts. as might be necessary. In May, 1921, applts., who were civilians, were tried by a military ct. held by order of the General under the authority of the Commander-in-Chief on a charge of improperly carrying arms, & were convicted & sentenced to death, subject to confirmation:—*Held*: prohibition would not lie, because the officers constituting the military ct. did not claim to act as a judicial tribunal in any legal sense, & they were *functi officio*.—*Re CLIFFORD & O'SULLIVAN*, [1921] 2 A. C. 570; 90 L. J. P. C. 244; 126 L. T. 97; 37 T. L. R. 988; 65 Sol. Jo. 792; 27 Cox, C. C. 120, H. L.

Admiralty court.—*See* No. 2284, *ante*; ADMIRALTY, Vol. I., pp. 100, 101, Nos. 10-23.

2288. Attorney-General—Not a court—Though acting judicially.—*Ex p.* SIMON (1888), 4 T. L. R. 754, C. A.

2289. — — — — ——The A.-G. is not a ct. He may have a judicial function to perform, but he is not a ct. & prohibition does not lie to him (LORD ESHER, M.R.).—*Re VAN GELDER'S PATENT* (1888), 6 R. P. C. 22, C. A.

Annotation.—*Refd.* R. v. Comptroller-General of Patents (1899), 68 L. J. Q. B. 568.

2290. Board of Trade—Examination by Inspector—Into affairs of company.—*Re GROSVENOR & WEST END RAILWAY TERMINUS HOTEL CO., LTD.* (1897), 76 L. T. 337; 13 T. L. R. 309; 41 Sol. Jo. 365, C. A.

2291. — — — — ——*R. v. BOARD OF TRADE*, *Ex p.* DERRY (1917), 33 T. L. R. 316; 34 R. P. C. 241, D. C.

Compensation authority—Reference by licensing justices.—*See* INTOXICATING LIQUORS.

2292. Coroner.—*R. v. HERFORD*, No. 2285, *post*. County courts.]—*See* COUNTY COURTS, Vol. XIII., pp. 546-551, Nos. 1011-1077.

— *In respect of building society disputes.*—*See* BUILDING SOCIETIES, Vol. VII., p. 497, No. 264.

— *In respect of friendly societies disputes.*—*See* FRIENDLY SOCIETIES.

2293. County Palatine courts.—WILLIAMS v. LISTER (1867), Hard. 475; 145 E. R. 555.

2294. — — — — ——BEAUMONT v. WIGSTON HOSPITAL (1614), 1 Roll. Rep. 42; 81 E. R. 313.

Annotation.—*Refd.* Lockey v. Dangerfield (1738), Andr. 286.

2295. — — — — ——Chester.]—GRIGG'S CASE (1613), Hut. 59; 123 E. R. 1100.

Annotations.—*Refd.* Vaughan v. Evans (1725), 1 Stra. 630. *Mentd.* London Corp'n. v. Cox (1867), L. R. 2 H. L. 239.

2296. — — — — ——ROWLAND v. HOCKENHULLE (1701), 1 Ld. Raym. 698; 91 E. R. 1365.

2297. — — — — ——Lancaster.]—*Ex p.* WILLIAMS (1865), 34 Beav. 370; 55 E. R. 677.

See, also, COURTS, p. 194, No. 987, *ante*.

2298. Courts of appeal—After suit remitted to court below.—DARBY v. COHEN'S, No. 2220, *ante*.

2299. Courts of Cinque Ports.—WILLIAMS v. LISTER (1867), Hard. 475; 145 E. R. 555.

2300. Court of City of Bristol.—WAINEMAN v. SMITH, No. 2150, *ante*.

Courts of Chivalry.—*See* COURTS, p. 193, Nos. 977, 978, *ante*.

Court of Passage of Borough of Liverpool.—*See* ADMIRALTY, Vol. I., p. 250, Nos. 1785, 1786.

Courts-martial.—*See* No. 2284, *ante*; ROYAL FORCES.

2301. Criminal courts.—*R. v. HERFORD*, No. 2285, *ante*.

2302. Divorce court.—FORSTER v. FORSTER & BERRIDGE (1863), 4 B. & S. 187; 8 L. T. 661; 122 E. R. 430; *sub nom.* FOSTER v. FOSTER & BERRIDGE, *Ex p.* BERRIDGE, 2 New Rep. 353; 32 L. J. Q. B. 312; 10 Jur. N. S. 254; 11 W. R. 799.

Annotations.—*Refd.* London Corp'n. v. Cox (1867), L. R. 2 H. L. 239. *Mentd.* R. v. Twiss (1869), L. R. 4 Q. B. 407; R. v. Surrey J.J. (1870), L. R. 5 Q. B. 466; Chambers v. Green (1875), L. R. 20 Eq. 552; Worthington v. Jeffries (1875), L. R. 10 C. P. 379; R. v. Richmond Confirming Authority, *Ex p.* Howitt, [1921] 1 K. B. 248.

Ecclesiastical courts.—*See* ECCLESIASTICAL LAW.

2303. Electricity Commissioners.—*R. v. ELECTRICITY COMRS.*, *Ex p.* LONDON ELECTRICITY JOINT COMMITTEE (1923), *Times*, April 13.

Income Tax Commissioners.—*See* INCOME TAX.

Inclosure Commissioners.—*See* COMMONS & RIGHTS OF COMMON, Vol. XI., p. 73, No. 953.

Justices.—*See* MAGISTRATES.

2304. Judicial Committee of Privy Council—Acting as ecclesiastical court of appeal.—*Ex p.* SMYTH, No. 1185, *ante*.

2305. — — — — ——*R. v. KENSINGTON (CHURCH-WARDENS)* (1837), 1 Jur. 821.

2306. — — — — ——CHESTERTON v. FARLAR, No. 2212, *ante*.

2307. Land Commissioners—Under Copyhold Act, 1887 (c. 73), s. 11.—*R. v. LAND COMRS. OF ENGLAND* (1889), 23 Q. B. D. 59; 58 L. J. Q. B.

BRENNAN (1915), 15 S. R. N. S. W. 173; 32 N. S. W. W. No. 51.—AUS.

m. Arbitration courts.—Prohibition will lie to the ct. of arbitration.—CLANCY v. BUTCHERS' SHOP EMPLOYEES UNION (1904), 1 C. L. R. 181.—AUS.

n. — — — — ——*Held*: where the President of the Commonwealth Ct. of Conciliation & Arbitration has, without jurisdiction, made an award, prohibition will lie to prevent further proceedings in that ct. under the award.—BUILDERS' LABOURERS' CASE (1914), 18 C. L. R. 224.—AUS.

o. — — — — ——FAULDING & CO. v. COASTAL DISTRICTS UNITED CLERKS INDUSTRIAL UNION OF WORKERS (1914), 16 W. A. L. R. 32.—AUS.

p. — — — — ——*Not if exclusive authority to determine industrial disputes.*—DALGETY & CO., LTD. v. METROPOLITAN SHOP ASSISTANTS & WAREHOUSE EMPLOYEES' INDUSTRIAL UNION OF WORKERS (1914), 16 W. A. L. R. 139.—AUS.

q. — — — — ——Under Railway Act.]—LACHINE, ETC. RY. CO. v. REID (1914), Q. R. 23 K. B. 373; 20 D. L. R.

816.—CAN.

r. Commissioners—Under Collection Act.—A comr. under above Act is not a ct. & prohibition will not lie.—MOKAY v. CAMPBELL (1904), 30 N. S. R. 522.—CAN.

s. — — — — ——Under Liquor Licence Act, 1887.]—A board of licence comrs. under above Act is not a body against which prohibition will be granted, prohibiting them from issuing a licence.—RE THOMAN'S LICENSE (1895), 26 O. R. 448.—CAN.

t. — — — — ——Under Mining Act.]—Pro-

313; 53 J. P. 773; 37 W. R. 538; 5 T. L. R. 445, O. A.

2308. Local Government Board.]—R. v. LOCAL GOVERNMENT BOARD, No. 2130, ante.

2309. London County Council.]—R. v. LONDON COUNTY COUNCIL, [1893] 2 Q. B. 454; 63 L. J. Q. B. 4; 69 L. T. 580; 58 J. P. 21; 42 W. R. 1; 9 T. L. R. 601; 37 Sol. Jo. 669; 4 R. 531, O. A.

Mayor's & City of London Court.]—See MAYOR'S COURT, LONDON.

2310. Patents—Comptroller-General.]—Re HALL (1888), 21 Q. B. D. 137; 57 L. J. Q. B. 494; 59 L. T. 37; 36 W. R. 892, D. C.

See, further, PATENTS & INVENTIONS.

Prize Court.]—See No. 2284, ante; PRIZE LAW & JURISDICTION.

Railway & Canal Commissioners.]—See RAILWAYS & CANALS.

Registrar of Friendly Societies.]—See FRIENDLY SOCIETIES.

Salford Hundred Court.]—See COURTS, pp. 202, 203, Nos. 1111–1114, ante.

2311. Sheriff.]—GRIFFITHS v. STEPHENS (1819), 1 Chit. 196.

Annotations:—Mentd. Bowden v. Hall (1843), Dav. & Mer. 54; Faulkner v. Johnson (1843), 7 Jur. 584.

2312. ——— & Commissioners of Woods & Forests —Not where verdict found under 9 & 10 Vict., c. 38 —Sheriff functus officio.]—CHABOT v. MORPETH (LORD) (1848), 15 Q. B. 446; 117 E. R. 528; *sub nom. Re CHABOT*, 17 L. J. Q. B. 336; 12 Jur. 1023; *sub nom. CHABOT v. WOODS, FORESTS, ETC. COMRS.*, 11 L. T. O. S. 287; *subsequent proceedings, sub nom. CHABOT v. MORPETH (LORD)* (1850), 19 L. J. Q. B. 377.

Annotations:—Reid. R. v. Kensington Income Tax Comrs., [1913] 3 K. B. 370; Re Clifford & O'Sullivan, [1921] 2 A. C. 670. Mentd. Williams v. Admiralty Lords Comrs. (1851), 11 C. B. 420; R. v. L. & N. W. Ry. (1854), 3 E. & B. 413.

Stannaries Court.]—See COURTS, p. 203, No. 1117, ante.

Tithe Commissioners.]—See ECCLESIASTICAL LAW.

University courts.]—See COURTS, p. 200, No. 1071, ante.

hibition will lie to a Gold Comr. acting as judge of a mining ct.—*BURK v. TUNSTALL* (1890), 2 B. C. R. 12.—**CAN.**

a. Vice-Admiralty Court.]—Prohibition will issue to a vice-admiralty ct. if exceeding its jurisdiction.—Ex p. HUNTER (1841), Res. & Eq. Jud. 8.—AUS.****

b. ———.]—A. G. OF CANADA v. FLINT (1884), 4 C. L. T. 116; 15 N. S. R. 453.—CAN.****

PART VIII. SECT. 7.

2313 i. Whether by waiver or acquiescence.]—Prohibition will not go where the jurisdiction of an inferior ct. has been acquiesced in, unless *ex debito justitiæ*. Where there is absolute want of jurisdiction, prohibition will be granted if anything remains to be done which can be prohibited, even after judgment, & notwithstanding acquiescence in the proceedings of the inferior ct.—*MASLIN v. CASEY* (1882), 1 N. Z. L. R. 138.—N.Z.****

2313 ii. ———.]—Acquiescence is no bar to an application for prohibition where the ct. to be prohibited was aware of the want of jurisdiction & nevertheless proceeded. This is the reason of the distinction between acquiescence where the want of jurisdiction appears on the face of the proceedings & acquiescence where it does not so appear.—*WIREMU POMARE v. PIUKANANA* (1895), 14 N. Z. L. R. 340.—N.Z.****

2313 iii. ———.]—There can be no

waiver or acquiescence where there is a defect of jurisdiction over the cause, at all events before judgment is recorded; but after judgment, if the objection to the jurisdiction has not been previously set up, prohibition will not go unless the defect is apparent upon the proceedings.—*WELLS v. CAREW* (1900), 19 N. Z. L. R. 349.—**N.Z.**

2314 i. ——— Submission to jurisdiction.]—An appet. for prohibition against a judge of an inferior ct. for excess of jurisdiction, who has appeared at the trial, cross-examined witnesses, argued the case before the judge, & taken no exception at the time to the jurisdiction, is precluded by his own act from objecting to the jurisdiction after judgment entered & execution issued in the division ct.—*Re BURROWS* (1868), 18 C. P. 493.—CAN.****

2314 ii. ———.]—Where deft. has taken his chances at the trial, & has neither appealed nor sufficiently accounted for his delay in moving for a prohibition, the discretion of the ct. should not be exercised in his favour.—*Re SOULES v. LITTLE* (1888), 12 P. R. 533.—CAN.****

2314 iii. ———.]—*Re McPHERSON v. McPHEE* (1891), 21 O. R. 411.—CAN.****

2314 iv. ——— Want of jurisdiction apparent on face of proceedings.]—Where the want of jurisdiction is apparent on the face of the proceedings prohibition is not a matter of discretion, but should be granted. In such case waiver or acquiescence can-

Visitors of charities.]—See CHARITIES, Vol. VIII., p. 390, Nos. 2098–2100.

SECT. 7.—LOSS OF RIGHT TO.

Prohibition of proceedings in county court.]—See COUNTY COURTS, Vol. XIII., pp. 470, 487, 547, 550, 551, Nos. 193, 370, 1033, 1060–1073.

2313. Whether by waiver or acquiescence.]—A prohibition was refused because the party applying had submitted to the jurisdiction of the spiritual ct.—*SMITH v. POYNDRILL'S EXECUTORS* (1627), Cro. Car. 97; 79 E. R. 686.

Annotation:—Mentd. Woodward v. Makepeace (1688), 1 Salk. 164.

2314. ——— Submission to jurisdiction—Want of jurisdiction apparent on face of proceedings.]—*DONEGAL v. DONEGAL* (1821), 3 Phillim. 597; 1 Hag. Con. 6, n.; 161 E. R. 1426; *sub nom. CHICHESTER v. DONEGAL*, 6 Madd. 375.

Annotation:—Mentd. Parkes v. Parkes (1852), 2 Rob. Eccl. 518.

2315. ———.]—FARQUHARSON v. MORGAN, No. 2110, ante.

2316. ——— Want of jurisdiction not apparent on face of proceedings.]—A party is not entitled to a writ of prohibition if, at the trial in the ct. below, he acquiesces in the proceedings, & the proceedings themselves are correct upon their face.—*YATES v. PALMER* (1849), 6 Dow. & L. 283; Rob. L. & W. 87; Cox, M. & H. 314; 14 L. T. O. S. 109.

Annotations:—Consd. Re Knowles v. Holden (1855), 24 L. J. Ex. 223. Reid. Farquharson v. Morgan, [1894] 1 Q. B. 552.

2317. ——— In knowledge of applicant.]—*BROAD v. PERKINS*, No. 2113, ante.

2318. ——— Sufficiency of evidence.]—*SCHNEIDER v. EDELSTEIN* (1891), 35 Sol. Jo. 416, D. C.

2319. ——— What amounts to—Not entering appearance.]—Where an action has been commenced in the Mayor's Ct. deft. does not, by entering appearance, not under protest, & taking other steps, waive his right to object to the

not create jurisdiction: nor can laches operate to defeat the right to prohibition.—*Re NOWELL & CARLSON*, [1919] 1 W. W. R. 387.—**CAN.**

2314 v. ——— Where there is a statutory provision of which advantage taken.]—*CHASE v. SING* (1899), 6 B. C. R. 454.—CAN.****

2314 vi. ———.]—*Re NOWELL & CARLSON*, [1919] 1 W. W. R. 387.—CAN.****

2316 i. ——— Want of jurisdiction not apparent on face of proceedings.]—Acquiescence disentitling the writ can only be where the defect of jurisdiction is not apparent on the face of the proceedings.—*R. v. HARVEY* (1879), O. B. & F. 165.—N.Z.****

2319 i. ——— What amounts to—General rule.]—When want of jurisdiction arises, not from the nature of the subject of the suit, but because deft. is not resident within the jurisdiction, then, if deft. appears for the purpose of entering into the merits of the suit, he cannot afterwards apply for prohibition; but if he takes express objection to the jurisdiction, & promptly applies for prohibition, he cannot be said to have submitted to the jurisdiction.—*BANK OF MONTREAL v. POYNER* (1891), 7 Man. L. R. 270.—CAN.****

2319 ii. ——— Abortive attempt to appeal.]—An abortive attempt to appeal is not a bar to right to move for prohibition.—*SWANICK v. KOTINSKY* (1909), 14 O. W. R. 537; 19 O. L. R. 407.—CAN.****

2319 iii. ——— Delay.]—*BENDIGO*

Sect. 7.—Loss of right to. **Sect. 8: Sub-sects. 1, 2 & 3.]**

jurisdiction so soon as he ascertains exactly what the nature of pltf.'s claim against him is.—*LEE v. COHEN* (1894), 71 L. T. 824; 39 Sol. Jo. 27, C. A. *Annotation*.—*Fold. Clarke v Knowles*, [1918] 1 K. B. 128.

2320. ——— Obtaining orders for particulars & discovery—On undertaking to plead.]—In an action in the Mayor's Ct. for a sum exceeding £50, the whole cause of action did not arise within the City of London. Deft. obtained orders for particulars on his undertaking to plead to the issue. He also obtained an order for discovery of documents. Deft. having applied for a writ of prohibition:—*Held*: deft. had waived the objection to the jurisdiction, & a writ of prohibition should not issue.—*SUCKAN v. WEINER* (1901), 17 T. L. R. 494, D. C.

2321. By delay.]—*ST. MAGNUS-THE-MARTYR, WITH ST. MARGARET, NEW FISH STREET, & ST. MICHAEL, CROOKED LANE, LONDON (PAROCHIAL CHURCH COUNCIL) v. LONDON DIOCESE CHANCELLOR*, [1922] W. N. 295, D. C.

SECT. 8.—PROCEDURE.

SUB-SECT. 1.—IN GENERAL.

2322. Necessity for uberrima fides.]—Appet. obtained a rule *nisi* directed to the Income Tax Comrs. calling upon them to show cause why a writ of prohibition should not be awarded to prohibit them from proceeding upon an assessment upon certain grounds. The Div. Ct., without dealing with the merits of the case, discharged the rule on the ground that appet. had suppressed or misrepresented the facts material to her application. On appeal:—*Held*: (1) the rule of the ct. requiring *uberrima fides* on the part of appet. for an *ex p.* injunction applied equally to the case of an application for a rule *nisi* for a writ of prohibition; (2) there having been a suppression of material facts by appet. in her affidavit, the ct. would refuse a writ of prohibition without going into the merits of the case.—*R. v. KENSINGTON INCOME TAX COMRS., Ex p. DE POLIGNAC (PRINCESS)*, [1917] 1 K. B. 486; 86 L. J. K. B. 257; 116 L. T. 136; 33 T. L. R. 113; 61 Sol. Jo. 182, C. A.

2323. Demise of Crown—Effect of.]—*DIXE v. BROWNE* (1826), Palm. 422; 81 E. R. 1152.

2324. Time for application—Not on last day of term.]—A writ of prohibition cannot, at least except under special circumstances, be moved for on the last day of term.—*THORNE v. SIMMONS*

(1850), 9 O. B. 223; 14 L. T. O. S. 420; 187 E. R. 878.

2325. Renewal of application—Where rule nisi discharged—Fresh affidavits.]—Where a rule *nisi* for a prohibition to an inferior ct. has been discharged, the ct. will not allow the motion to be renewed, upon affidavits stating matter not before presented to the ct., but existing at the time of the original application.—*RICKETTS v. BODENHAM* (1836), 4 Ad. & El. 433; 5 L. J. K. B. 102; 111 E. R. 850; *sub nom.* *BODENHAM v. RICKETTS*, 6 Nev. & M. K. B. 537; 1 Har. & W. 756, n.

Annotations:—*Mentd.* *Roberts v. Humby* (1837), 3 M. & W. 120; *White v. Beard* (1839), 2 Curt. 480; *Re Baines* (1840), Cr. & Ph. 31; *Richards v. Dyke* (1842), 3 Q. B. 256; *Pease v. Chaytor* (1863), 3 B. & S. 620; *R. v. Podler* (1865), 12 L. T. 17; *James v. South Western Ry.* (1872), L. R. 7 Exch. 287; *Farquharson v. Morgan*, [1894] 1 Q. B. 552.

2326. Inspection.]—In prohibition a motion to have liberty to inspect parish books, & to have them produced at the trial, was granted.—*LOCKE v. HYET* (1721), Cooke, Pr. Cas. 21; 125 E. R. 933.

See, generally, DISCOVERY, INSPECTION & INTERROGATORIES.

SUB-SECT. 2.—WHO MAY APPLY.

2327. Either party.]—*ANON.* (1700), 12 Mod. Rep. 423; 88 E. R. 1425.

2328. Appellant—To stay his own appeal.]—An applt. may move for a prohibition to his own appeal.—*MARTYN v. CANTERBURY (ARCHBP.)* (1738), Andr. 258; 95 E. R. 388.

2329. Joint parties.]—Where two are joined in a libel in the spiritual ct., they may join in the prohibition.—*WOOD & CARVERNER v. SYMONS* (1629), Het. 147; 124 E. R. 412.

2330. ——— Not where injury several.]—Two cannot join in prohibition where the injury is several.—*KADWALADER v. BRYAN* (1629), Cro. Car. 162; 79 E. R. 741.

2331. Party aggrieved—Or stranger—Where court has no jurisdiction.]—*WADSWORTH v. SPAIN (QUEEN)*, *DE HABER v. PORTUGAL (QUEEN)*, No. 2114, *ante*.

2332. ——— ———.]—*LONDON CORPN. v. COX*, No. 2112, *ante*.

2333. ——— Discretion of court to refuse.]—*WORTHINGTON v. JEFFRIES*, No. 2118, *ante*.

2334. ———.]—*FORSTER v. FORSTER & BERRIDGE*, No. 2115, *ante*.

2335. Stranger—At discretion of court.]—*FORSTER v. FORSTER & BERRIDGE*, No. 2115, *ante*.

2336. ———.]—The granting of a prohibition on the application of a stranger is discretionary.—*R. v. TWISS* (1869), L. R. 4 Q. B. 407; 10 B. & S.

CORPN. v. CRAVEN (1898), 24 V. L. R. 173.—*AUS.*

2319 iv. ——— Permitting plaintiff to proceed to judgment.]—*ROBERTSON v. CORNWELL* (1878), 7 P. R. 297.—*CAN.*

2319 v. ——— Whether motion to set aside judgment.]—An application by deft. to the inferior ct. to set aside the judgment is not a bar to a motion for prohibition.—*Re MCGREGOR v. NORTON* (1889), 13 P. R. 223.—*CAN.*

2319 vi. ———.]—Deft., having taken exception to the jurisdiction, has not lost his right to prohibition merely because he allowed the case to be tried & judgment signed, especially as on the trial he still took exception to the jurisdiction; but by subsequently moving to set aside the judgment, there is such complete acquiescence in the jurisdiction with full knowledge of the facts, that prohibition will not issue.—*GIBBINS v.*

CHADWICK (1892), 8 Man. L. R. 209.—*CAN.*

2319 vii. ——— No objection to jurisdiction.]—*MEWHINNEY v. ROSS*, 4 J. R. N. S. 13.—*N.Z.*

PART VIII. SECT. 8, SUB-SECT. 2.
2331 i. Party aggrieved.]—*R. v. INDUSTRIAL COURT, Ex p. RHYNS JONES MACTAGGART & BIRCH, LTD.*, [1915] S. R. Q. 165.—*AUS.*

2331 ii. ———.]—*Re SAITFLEET (LOCAL OPTION BY-LAW OF TOWNSHIP OF)* (1908), 16 O. L. R. 293; 11 O. W. R. 356, 545.—*CAN.*

2331 iii. ——— Order sought to be prohibited made at his request.]—Where an erroneous order is made at the request of one of the parties & is acted upon, a prohibition at the request of such party will be refused.—*RICHARDSON v. SHAW* (1876), 6 P. R. 296.—*CAN.*

2331 iv. ——— Who instituted proceedings—To restrain enforcement of order.]

—A person who has set the law in motion in a ct. having no jurisdiction in the matter may himself obtain a writ of prohibition to restrain the enforcement of the order of that ct.—*R. v. HARVEY* (1879), O. B. & F. 165.—*N.Z.*

2335 i. Stranger—Inferior court acting without jurisdiction.]—If an inferior ct. acts without jurisdiction, a stranger may apply for a prohibition.—*Ex p. FRASER* (1899), 20 N. S. W. L. R. 67; 15 N. S. W. W. N. 211.—*AUS.*

2335 ii. ——— Where court has no jurisdiction—Immediately after notice of defective jurisdiction.]—Where a court has no jurisdiction to entertain an application, & immediately after knowledge of such application any person may apply for a writ of prohibition to restrain further proceedings.—*MASTER RETAILERS ASSOCN. OF NEW SOUTH WALES v. SHOP ASSISTANTS UNION OF NEW SOUTH WALES* (1904), 2 C. L. R. 94.—*AUS.*

298; 38 L. J. Q. B. 228; 20 L. T. 522; 33 J. P. 516; 17 W. R. 765.

Annotations:—Mentd. Re St. George-in-the-East (1876), 1 P. D. 311; Re St. Nicholas Cole Abbey, Re St. Benet Fink Churchyard, [1893] P. 58; Re Plumstead Burial Ground, [1895] P. 225; St. Nicholas Leicester v. Langton, [1899] P. 19; Re Bideford Parish, Ex p. Bideford, [1900] P. 314; Sutton v. Bowden, [1913] 1 Ch. 518; Fowke v. Berington, [1914] 2 Ch. 308.

2337. ———.]—When a writ of prohibition has been issued to restrain proceedings in the Mayor's Ct. on the application of a stranger to the suit, it cannot be sustained unless he can show that the ct. has exceeded its jurisdiction both with reference to the facts & the law, & then it is a matter of discretion with the superior ct. whether or not to set it aside.—*CHAMBERS v. GREEN* (1875), L. R. 20 Eq. 552; 44 L. J. Ch. 600.

Annotation:—Mentd. Ellis v. Fleming (1876), 1 C. P. D. 237.

See, also, Nos. 2112, 2114, 2118, *ante*, Nos. 2349–2351, *post*.

Nature of writ—Whether grantable ex debito justitiæ.]—*See* Nos. 2101–2111, *ante*.

SUB-SECT. 3.—WHO MAY GRANT.

2338. General rule—Any superior court.]—*PEEL'S CASE*, No. 2167, *ante*.

2339. — Every judge of High Court—Judicature Act, 1873 (c. 66).]—*HEDLEY v. BATES*, No. 2137, *ante*.

2340. — —.]—*MACKONCHIE v. PENZANCE* (LORD), No. 2129, *ante*.

2341. — —.]—(1) The granting of prohibition not being exclusively in the jurisdiction of the Crown side of the Q. B. Div., the High Ct., in making a rule absolute without pleadings, has power to make an order as to costs.

(2) Prohibition was not a jurisdiction belonging any more to the Q. B. than to the other cts. It might be applied for & granted either in the Q. B. or the Exch. or the C. P. They all had concurrent jurisdiction & power to inhibit inferior tribunals. Prohibition, too, could be & was granted by the Ct. of Ch. (LOPES, L. J.).—*R. v. LONDON COUNTY J.J. & LONDON COUNTY COUNCIL*, [1894] 1 Q. B. 453; 63 L. J. Q. B. 301; 70 L. T. 148; 58 J. P. 380; 42 W. R. 225; 10 T. L. R. 189; 9 R. 148, C. A.

Annotations:—As to (1) *Apld.* R. v. Jones, [1894] 2 Q. B. 382; R. v. Woodhouse, [1906] 2 K. B. 501. *Generally, Mentd.* R. v. City of London Assmt. Com., [1907] 2 K. B. 764.

2342. Judge in chambers.]—*R. v. CHARING-CROSS BANK* (1889), 6 T. L. R. 41, D. C.

2343. In vacation—Master of the Rolls.]—Writ of prohibition against a county ct. judge was granted in the vacation by the Master of the Rolls.—*WRIGHT v. CATTELL* (1850), 13 Beav. 81; 19 L. J. Ch. 527; 16 L. T. O. S. 405; 51 E. R. 31.

2344. — Court of Chancery—When common law courts not sitting.]—When the common law cts. are not sitting, the Ct. of Ch. will upon an *ex p.* application grant a writ of prohibition to restrain an ecclesiastical ct. from trying a question of prescription.—*Re BATEMAN* (1870), L. R. 9 Eq. 660; 39 L. J. Ch. 383; 22 L. T. 60; *sub*

nom. *Re JENKINS v. LLANTRISSANT* (MINISTER & PARISHIONERS), *Ex p.* BATEMAN, 18 W. R. 425.

Annotation:—Foll'd. *Ex p.* Edwards (1873), 29 L. T. 529.

2345. — —.]—*Ex p.* EDWARDS (1873), 29 L. T. 529; *affd.* on other grounds, 9 Ch. App. 138, L. O. & L. J.

2346. — Judge of Admiralty Division.]—*Pltf.* issued a plaint, on the admty. side of a county ct., for damage by collision. Defts. denied their liability, but at the trial judgment was given for *pltf.* with costs, subject to a reference to the registrar to assess the damages. Defts. then paid into ct. by way of tender, a sum which was found by the registrar to be sufficient to cover the damage. The judge thereupon rescinded so much of his judgment as dealt with the costs, & made a decree condemning *pltf.* in the costs of the action & of the reference. *Pltf.* applied to a judge of the Admty. Div., who was sitting in chambers, in vacation, exercising the jurisdiction of all the divs. of the High Ct., for a writ of prohibition in respect of so much of the decree as dealt with the costs of the action. The application was refused, & the judge did not desire any further argument. *Pltf.* appealed, & an objection to the jurisdiction was raised:—*Held:* (1) by virtue of Jud. Act, 1873 (c. 66), a judge of the Admty. Div. has all the powers, as to prohibition, of a judge of the High Ct.; (2) as the judge did not require any further argument, the appeal, in an admty. cause, was direct to the Ct. of Appeal, notwithstanding County Cts. Act, 1888 (c. 43), s. 132, which only applied to proceedings in the High Ct., & prevented an application to another Judge of the High Ct., or to another Div. Ct., when the first judge, or Div. Ct., had refused to grant the writ.

It was asserted that prohibition was a matter which necessarily went into the Crown paper, & hence it followed that prohibition belonged to Crown practice & to the Q. B. Div. That was a mistake. Under the old system applications for prohibition might have been made to the Ct. of C. P. or to the Exch. Ct., or to the Q. B. separately; since Jud. Act, 1873, by which all the cts. were merged together, writs for prohibition are usually moved for from the Crown side of the Q. B. Div., but there is nothing necessarily confining prohibition to Crown practice, & it is incorrect to say that it essentially & virtually belongs to the Crown side of the Q. B. Division, & in *Jones v. Slee* [32 Ch. D. 585] this ct. dealt with the matter as being within the jurisdiction of the Ch. Div. (BOWEN, L. J.).—*THE RECEPTEA*, [1893] P. 255; 62 L. J. P. 118; 69 L. T. 252; 41 W. R. 561; 9 T. L. R. 535; 37 Sol. Jo. 580; 7 Asp. M. L. C. 359; 1 R. 644, C. A.

Annotations:—Generally, Mentd. *Re* London Scottish Permanent Bldg. Soc. (1893), 63 L. J. Q. B. 112; *The Theresa* (1894), 11 R. 681; *Mowlem v. Dunne* (1912), 106 L. T. 611.

2347. Court of Chancery.]—Although the Ct. of Ch. may have jurisdiction to grant a writ of prohibition yet the proper course is, during term time, to apply to one of the cts. of common law.—*Re FOSTER* (1857), 24 Beav. 428; 30 L. T. O. S. 162; 21 J. P. 788; 3 Jur. N. S. 1238; 6 W. R. 48; 53 E. R. 423.

PART VIII. SECT. 8, SUB-SECT. 3.

2338 i. General rule—Any superior court.]—A superior ct. may intervene & prevent any usurpation of jurisdiction by the inferior ct.—*Ex p.* LEES (1874), 24 C. P. 214.—*CAN.*

2339 i. — High Court of Justice.]—*CLARKE v. MACDONALD* (1883), 4 O. R. 310.—*CAN.*

2342 i. Judge in chambers—Not to judge having equal & concurrent juris-

*diction.]—*A judge in chambers has no power to order the issue of a writ of prohibition.—*WATSON v. LILLICO* (1889), 6 Man. L. R. 59.—*CAN.*

2342 ii. — —.]—*Re* R., *HALL v. GOWANLOCK* (1899), 29 O. R. 435.—*CAN.*

2342 iii. — —.]—*Re* LANDS-BOROUGH (1911), 18 W. L. R. 601; 21 Man. L. R. 708.—*CAN.*

2342 iv. — —.]—*May refer matter to*

*the court in banc.]—**R. v. O'NEIL* (1888), 20 N. S. R. 530.—*CAN.*

2342 v. — —.]—*May grant order nisi returnable in term—With stay of proceedings meanwhile.]—**Ex p.* BAIRD (1890), 29 N. B. R. 162.—*CAN.*

2342 vi. — —.]—*May make order on summons.]—*A judge in chambers has power, on summons, to make an order for prohibition.—*R. v. ROBINSON* (1880), O. B. & F. 88.—*N.Z.*

Sect. 8.—*Procedure: Sub-sects. 4, 5, 6 & 7.*

SUB-SECT. 4.—AGAINST WHOM GRANTED.

To what tribunals granted.]—See Sect. 6, *ante*.

2343. *General rule.*—Prohibition must be against some certain person; but if divers have appeared to sue, a prohibition shall be against all of them (ROLL, J.).—HILL v. BIRD, No. 2169, *ante*.

SUB-SECT. 5.—MODE OF APPLICATION.

See C. O. R., rr. 70, 71, 266.

2349. *In person—Inferior court proceeding without jurisdiction.*—Mayor's Ct. of London Procedure Act, 1857 (c. clvii.), s. 48, enacts that a judgment removed from that ct. to a superior ct. shall have the same force & effect as a judgment recovered in the superior ct.:—*Held*: it was competent to the ct. to which such judgment was so removed to set it aside, if satisfied that it was obtained in a matter over which the inferior ct. had no jurisdiction.

A prohibition may be moved for by deft. himself, where the ct. is satisfied that the inferior ct. is proceeding without jurisdiction.—BRIDGE v. BRANCH (1876), 1 C. P. D. 633; 34 L. T. 905.

2350. *Not in formâ pauperis.*—HERTFORD (MARQUIS) v. DOLPHIN, *Ex p.* DOLPHIN (1854), 18 J. P. Jo. 725.

2351. —R. S. C., Ord. 16, r. 22 not applicable.]—The above rule does not apply to proceedings on the Crown side of the Q. B. Div., & therefore a party cannot be admitted to appeal in *formâ pauperis* against an order for prohibition.—MULLENEISEN v. COULSON (No. 2) (1888), 21 Q. B. D. 3; 57 L. J. Q. B. 464; 58 L. T. 562; 36 W. R. 811, D. C.

Annotation:—Mentd. Clements v. L. & N. W. Ry. (No. 1) (1894), 9 R. 223.

See, now, R. S. C. (Poor Persons), 1920, Ord. 16, rr. 22–31, n.

At chambers.—Prohibition to county court.]—See COUNTY COURTS, Vol. XIII., p. 546, No. 1019.

SUB-SECT. 6.—AFFIDAVITS IN SUPPORT.

See C. O. R., r. 6.

2352. *General rule.*—Where matter of the suggestion does not appear on libel, affidavit is necessary.

Where the matter suggested for a prohibition appears on the face of the libel we never insist upon an affidavit; but unless it appear upon the face of the libel or if you move for a prohibition as to more than appears on the face of the libel to be out of their jurisdiction you ought to have affidavit of the truth of your suggestion (HOLT, C.J.).—GODFREY v. LLEWELLIN (1699), 2 Salk. 549; Holt, K. B. 593; 91 E. R. 464.

Annotations:—Refd. Hinds v. Thompson (1738), Andr. 299; Buggin v. Bennett (1767), 4 Burr. 2035; London Corpn. v. Cox (1867), L. R. 2 H. L. 239.

2353. *Whether necessary—To prove truth of fact alleged.*—DART v. HALL (1699), 1 Ld. Raym. 441;

PART VIII. SECT. 8, SUB-SECT. 4.

c. *Against court—Not to chairman thereof.*—R. v. WASLEY, *Ex p.* FRANKEL, [1914] V. L. R. 635.—AUS.

d. —.]—A writ of prohibition only lies against an inferior tribunal & not against the members composing such tribunal.—VERSAILLES v. IBBOTSON (1899), Q. R. 17 S. C. 195.—CAN.

e. *Against corporation—Not to its officers.*—A writ of prohibition against a corp. must be addressed to the corp. itself & not to the officers composing it, or each of them.—LANDRY v. MIGNEAULT (1871), 15 L. C. J. 65.—CAN.

f. *Against person having legal existence.*—VERSAILLES v. IBBOTSON (1899), Q. R. 17 S. C. 195.—CAN.

91 E. R. 1193; *sub nom.* HART v. HALL, Holt, K. B. 673; 12 Mod. Rep. 243.

2354. —.]—On moving for a prohibition to an inferior ct. for refusing a plea, the party ought to offer an affidavit of the truth of the facts in the plea.—BURDETT v. NEWELL (1705), 2 Ld. Raym. 1211; 92 E. R. 299.

2355. —Ground for prohibition not apparent on face of proceedings.]—(1) After sentence below, prohibition cannot go, unless want of jurisdiction appears on the face of the proceedings.

If it appears upon the face of the proceedings that the ct. below have no jurisdiction, a prohibition may issue at any time either before or after sentence because all is a nullity. It is *coram non judice*. But where it does not appear upon the face of the proceedings, if the deft. below will lie by & suffer that ct. to go on under an apparent jurisdiction it would be unreasonable that this party should obtain a prohibition after all this acquiescence (LORD MANSFIELD, C.J.).

(2) Where the want of jurisdiction appears on the face of the proceedings an affidavit is not necessary, though every suggestion that does not appear upon the face of the proceedings, but is collateral & out of them, ought to be verified by affidavit (LORD MANSFIELD, C.J.).—BUGGIN v. BENNETT (1767), 4 Burr. 2035; 98 E. R. 60.

Annotations:—As to (1) Consd. Roberts v. Humby (1837), 3 M. & W. 120; London Corpn. v. Cox (1867), L. R. 2 H. L. 239; Farquharson v. Morgan, [1894] 1 Q. B. 552. *Refd.* Batty v. Thompson (1848), 12 J. P. Jo. 293; Jackson v. Beaumont (1855), 11 Exch. 300. *As to (2) Follid.* Caton v. Burton (1775), 1 Cowp. 330. *Refd.* London Corpn. v. Cox (1867), L. R. 2 H. L. 239; Alderson v. Palliser (1901), 70 L. J. K. B. 935. *Generally, Mentd.* Robinson v. Lenaghan (1848), 2 Exch. 333.

2356. —.]—A prohibition was denied where the matter of suggestion was dehors the proceedings, unless verified by affidavit.—CATON v. BURTON (1775), 1 Cowp. 330; 98 E. R. 1113.

Annotation:—Refd. London Corpn. v. Cox (1867), L. R. 2 H. L. 239.

2357. —.]—In an action in an inferior ct. for a matter out of the jurisdiction, in vacation time, a prohibition lies in Ch. on affidavit that the matter is out of the jurisdiction, but no affidavit is necessary where, on the face of the declaration, the matter appears to be out of the jurisdiction.—ANON. (1718), 1 P. Wms. 476; 24 E. R. 480.

Annotation:—Consd. Iveson v. Harris (1802), 7 Ves. 251.

2358. —Want of jurisdiction apparent on face of proceedings.]—Although whenever the want of jurisdiction appear upon the face of the proceedings below, prohibition after sentence may issue without affidavit, yet where such want appears upon suggestion only, after sentence, an affidavit verifying it is necessary.—SELBY v. YORK (1737), Lee temp. Hard. 392; 95 E. R. 253.

2359. —.]—A prohibition was granted to the spiritual ct., after sentence, to compel the present churchwardens to make a rate to reimburse the late churchwardens, & as it appeared on the face of the sentence that there was want of jurisdiction no affidavit was required.—DAWSON v. WILKINSON (1737), Andr. 11; Lee temp. Hard. 381; 95 E. R. 274.

Annotation:—Mentd. Chesterton & Hutchins v. Farlar (1836), 1 Curt. 345.

PART VIII. SECT. 8, SUB-SECT. 6.

2352 i. *General rule—Ground for prohibition must be shown.*—HARTE v. BYRNE (1851), 1 I. C. L. R. 557; 3 Ir. Jur. 368.—IR.

2353 i. *Whether necessary—Want of jurisdiction apparent on face of proceedings.*—10 Edw. 7, c. 22.—MITCHELL v. DOYLE (1913), 23 O. W. R. 926; 4 O. W. N. 725; 10 D. L. R. 297.—CAN.

2360. — Where no authentic copy produced of bill—To prove true copy.]—A rule was obtained to show cause why a prohibition should not be granted, but upon showing cause it was insisted, that no authentic copy of the libel was produced:—*Held*: this ought to be done, & it must be proved by affidavit to be a true copy, & for want of such affidavit the rule would be discharged.—*EGLESFIELD v. ANDERSON* (1734), Cooke, Pr. Cas. 107; 125 E. R. 988; *sub nom.* *EGLESFIELD v. ANDERSON*, Barnes, 427.

2361. — After sentence—Want of jurisdiction appearing only on suggestion.]—*SELBY v. YORK*, No. 2358, *ante*.

2362. How intitled.]—Affidavits in support of an application for a writ of prohibition must be intitled simply in the ct. & not in any cause.—*Ex p. EVANS* (1842), 2 Dowl. N. S. 410.

Annotation:—*Distd.* Wallace v. Allan (1875), 44 L. J. C. P. 351.

2363. —.]—A rule had been obtained for a prohibition to restrain the comrs. of the S. Ct. of Requests from enforcing judgment against deft. On cause being shown against the rule:—*Held*: the affidavits in support could be read, although they were intitled in the names of pltf. & deft.—*BREEDON v. CAPP* (1845), 9 Jur. 781; 9 J. P. Jo. 294.

2364. —.]—(1) It is no objection to an affidavit for a rule nisi in prohibition that it is stated to be "In the matter of an action commenced" in the inferior ct.

(2) Upon making absolute a rule for prohibition the ct. has a discretion to give costs.—*WALLACE v. ALLEN* (1875), L. R. 10 C. P. 607; 44 L. J. C. P. 351; 32 L. T. 830; 23 W. R. 703.

Annotations:—As to (2) *Fold.* R. v. London County J.J. & L. C. C., [1893] 2 Q. B. 476. *Consd.* R. v. London County J.J. & L. C. C., [1894] 1 Q. B. 453. *Generally, Mentd.* Ellis v. Flemming (1876), 45 L. J. Q. B. 512; Hawes v. Pavely (1876), 34 L. T. 836; Taylor v. Nicholls (1876), 1 C. P. D. 242.

2365. —.]—Affidavits used in support of an application on the Crown side for a prohibition must be intitled, "In the High Ct. of Justice, Q. B. Div.," as directed by C. O. R. 1886, r. 7, if they are not so intitled the ct. may refuse to hear the application.—*R. v. PLYMOUTH & DARTMOOR RY. CO., Ex p. GREAT WESTERN RY. CO.* (1889), 37 W. R. 334, D. C.

2366. Sufficiency of—Absence of jurisdiction—Stated without additional plea.]—*Qu.*: whether a prohibition issued from the Ct. of Ch., without application in Ct., upon an affidavit, stating merely, that the cause of action arose out of the jurisdiction, not adding, that Foreign Plea was tendered, & refused, is regular.—*IVESON v. HARRIS* (1802), 7 Ves. 251; 32 E. R. 102, L. C.

Annotations:—*Consd.* London Corp. v. Cox (1867), L. R. 2 H. L. 239; Seaward v. Paterson, [1897] 1 Ch. 545. *Mentd.* Brydges v. Brydges & Wood, [1909] P. 187; Ranson v. Platt, [1911] 2 K. B. 291.

2367. — Not distinctly appearing.]—On an application for a prohibition to certain improve-

2362 i. How intitled.]—Affidavits to be used on an application for prohibition should be intitled in the ct. to which such application is to be made, but not in any cause.—*SIDDALL v. GIBSON* (1859), 17 U. C. R. 98.—*CAN.*

2362 ii. —.]—Affidavits to be used on an application for a prohibition should be entitled in the ct. to which application is to be made but should not be entitled in any cause.—*Re MIRON v. MCCABE* (1867), 4 P. R. 171.—*CAN.*

2362 iii. —.]—*Re OLMSTEAD v. ERINGTON* (1886), 11 P. R. 366.—*CAN.*

2362 iv. —.]—Affidavits on which an application for a writ of prohibition

ments comrs., the ct. refused to interfere, as it did not distinctly appear on the affidavits that the comrs. were acting without jurisdiction.—*BIRCH v. SCARBOROUGH CORPN.* (1855), 19 J. P. 88.

2368. Effect of suppression of material facts in.]—*R. v. KENSINGTON INCOME TAX COMRS., Ex p. DE POLIGNAC (PRINCESS)*, No. 2322, *ante*.

SUB-SECT. 7.—PLEADINGS.

See C. O. R., r. 126.

2369. Pleading double.]—In prohibition a motion was made to plead double, that C., etc., named in the declaration, at a meeting, etc., did not make up a true & just account, etc., & that the account mentioned in the declaration was not examined approved & allowed by the vestry:—*Held*: the motion would be granted.—*COATES v. SMITH & MIDGLEY* (1735), Cooke, Pr. Cas. 122; 125 E. R. 997.

2370. —.]—Since 1 Will. 4 (c. 21), s. 1, several pleas may be pleaded in prohibition, as in common actions between subjects.—*HALL v. MAULE & SHEAT* (1835), 4 Ad. & El. 283; 1 Har. & W. 583; 5 Nev. & M. K. B. 455; 5 L. J. K. B. 6; 111 E. R. 793; *subsequent proceedings* (1838), 7 Ad. & El. 721.

2371. Failure to plead—Judgment in default.]—If a declaration in prohibition be by him who sued the prohibition, & no plea be put in due time, pltf. may have judgment by *nihil dicit, ideo stel prohibitio*, but if it be of the other side, & no plea, there shall be likewise a *nihil dicit*, & a consultation.—*TURTON v. REINER* (1701), 12 Mod. Rep. 447; 88 E. R. 1442.

2372. Form of pleading.]—A joint stock bank sued for a prohibition to restrain proceedings in foreign attachment against them as garnishees having in their hands money of G. Defts. pleaded a custom whereby on default of appearance by deft. the ct. might call on the garnishee to appear & show cause why pltf. should not have judgment & execution of deft.'s goods. The plea went on to allege that G. had been summoned & made default, etc.:—*Held*: as these allegations were of the substance of the plea & were untrue, the custom had not been followed & prohibition had been rightly granted.

Defts. have pleaded a certain custom & they have averred that the custom they have pleaded has been followed. The pleas allege a proceeding to compel a man to appear: suit, default & proceedings based on that default. The whole of that is admitted now to be a mere fiction, nothing of the kind having been done. Therefore not only are the pleadings not proved, but they are essentially disproved (JAMES, L.J.).—*LONDON JOINT STOCK BANK v. LONDON CORPN.* (1880), 5 C. P. D. 494; 42 L. T. 747; 28 W. R. 696, C. A.; *affd.*

(1880), O. B. & F. 88.—*N.Z.*

g. Before whom sworn.]—An affidavit can not be used in support of an application for a writ of prohibition, if it is sworn before a comr. who is a partner in a firm of attorneys acting in the matter as attorneys for appt.—*Re VICTORIA COUNTY LICENSE COMRS., Ex p. JEMMINGS* (1906), 2 E. L. R. 292; 37 N. B. R. 586.—*CAN.*

PART VIII. SECT. 8, SUB-SECT. 7.

2369 i. Pleading double.]—The statute giving double pleas extends to cases of prohibitions.—*LALOR v. BARRINGTON* (circa. 1820), Rowe, 395.—*IR.*

is grounded ought to be entitled simply in the ct. to which application is made.—*Rich v. ANDERSON* (1853), 3 L. Ch. R. 463.—*IR.*

2366 i. Contents of—Must show impropriety of proceedings in inferior court.]—*Ex p. WAITE* (1840), 1 Kerr, 175.—*CAN.*

2366 ii. — Where excessive jurisdiction not clearly shown.]—Prohibition will lie to restrain the enforcement of the judgment of an inferior ct. as to so much of it as is in excess of jurisdiction, though the person applying does not make out clearly upon his affidavits how much is in excess & how much is not.—*R. v. ROBINSON*

Sect. 8.—Procedure: Sub-sects. 7, 8, 9 & 10.]

sub nom. LONDON CORPN. v. LONDON JOINT STOCK BANK (1881), 6 App. Cas. 393, H. L.

Annotation:—Mentd. *Re Price, Ex p. Sear* (1881), 17 Ch. D. 74.

2373. May be ordered—Discretion of court.]—

The fishing stores of the Dundee engaged in the Greenland fisheries were held liable to contribute in compensation for damage done to another British ship; such stores being considered appurtenances within the meaning of 53 Geo. III. (c. 159), notwithstanding that the first clause of the Act mentions only ship & freight. The owner of the Dundee subsequently applied to the Ct. of K. B. for a writ of prohibition. The ct. however declined to interfere in a summary way & directed *pltf.* to declare in prohibition.—*THE DUNDEE* (1823), 1 Hag. Adm. 109; *subsequent proceedings, sub nom.* GALE v. LAURIE (1826), 5 B. & C. 156.

Annotations:—Mentd. *The Girolamo* (1834), 3 Hag. Adm. 189; *Langton v. Horton* (1842), 11 L. J. Ch. 233; *The Milan* (1861), Lush. 388; *The Wild Ranger* (1862), Lush. 553; *Stoomvaart Maatschappij Nederland v. Peninsular & Oriental Steam Navigation Co.* (1882), 7 App. Cas. 795; *Re Salmon & Woods, Ex p. Gould* (1885), 2 Morr. 137; *The Dictator*, [1892] P. 304.

2374. ———.]—Where the Chancellor's Ct. of the University of Oxford had proceeded against a party for contumacy, in suing a resident undergraduate in one of the superior cts. of Westminster, & had issued a warrant to arrest him for not paying the costs of the proceeding, the ct. made a rule absolute for a prohibition, without requiring *appct.* to declare in prohibition.—*Re OXFORD (CHANCELLOR) & TAYLOR* (1841), 1 Q. B. 952; 113 E. R. 1396; *sub nom.* R. v. OXFORD UNIVERSITY (CHANCELLOR), 1 Gal. & Dav. 537; 11 L. J. Q. B. 37; 6 Jur. 319.

Annotation:—Reid. *Worthington v. Jeffries* (1875), L. R. 10 C. P. 379.

2375. ———.]—On motion for a prohibition to a bishop & commissary against proceeding further in the matter of a charge of simony, or executing or giving effect to the sentence:—*Held*: a prohibition would be granted without calling upon *appct.* to declare.

If we felt any doubt we should be bound to invite further discussion by calling upon the dean of York to declare in prohibition. But, after the full & deliberate long prepared & maturely digested arguments which we have heard enforced with consummate ability by counsel of the greatest learning & of the highest reputation no additional light can be expected (LORD DENMAN, C.J.).—*Re YORK (DEAN)* (1841), 2 Q. B. 1; 114 E. R. 1; *sub nom.* R. v. YORK (ARCHBP.) (1842), 2 Gal. & Dav. 202; 10 L. J. Q. B. 306; 6 Jur. 412.

Annotations:—Reid. *Ex p. Denison* (1854), 4 E. & B. 292; *Re East Brent* (1854), 18 J. P. 808; *Re Taunton* (1854), 24 L. T. O. S. 140; *Worthington v. Jeffries* (1875), L. R. 10 C. P. 379. *Mentd.* *Whiston v. Rochester* (1849), 7 Hare, 532; *Pusey v. Jovett* (1863), 1 New Rep. 488; *Richards v. Fincher* (1873), L. R. 4 A. & E. 107; *Phillpotts v. Boyd* (1875), L. R. 6 P. C. 435; *R. v. Oxford Bp.* (1879), 4 Q. B. D. 245; *Reid v. Lincoln Bp.* (1889), 14 P. D. 88; *Cox v. Hakes* (1890), 15 App. Cas. 506.

2376. ———.]—WADSWORTH v. SPAIN (QUEEN), DE HABER v. PORTUGAL (QUEEN), No. 2114, *ante*.

2377. ———.]—KELSEY v. BRIAN (1875), 32 L. T. 665, n.

2378. ———. Difficult point of law.]—After sentence in the ecclesiastical ct. in a matter of tithe where the question turned upon the construction of an Act of Parliament, upon a doubt raised whether that ct. had not misconstrued the Act, the ct. directed *pltf.* to declare in prohibition for the more solemn adjudication of the question whether, supposing the ct. below to have mis-

construed the Act, a prohibition should go after sentence in a matter in which the ct. below had original jurisdiction or whether it were only a ground of appeal.—*GARE v. GAPPER* (1803), 3 East, 472; 102 E. R. 678; *subsequent proceedings, sub nom.* GOULD v. GAPPER (1804), 5 East, 345.

Annotations:—Consd. *Blunt v. Harwood* (1838), 8 Ad. & El. 610. *Reid.* *Burder v. Veley* (1840), 12 Ad. & El. 233.

2379. ———.]—On a motion for prohibition to issue to restrain the ecclesiastical ct. from further proceeding in a matter:—*Held*: considering the difficulty of construing Acts of Parliament relevant to the case the parties must declare in prohibition.—*WHITE v. STEEL* (1861), 5 L. T. 449; *subsequent proceedings* (1862), 12 C. B. N. S. 383.

2380. ———. Alternative remedy provided by appeal.]—SERJEANT v. DALE, No. 2245, *ante*.

2381. ———.]—We were called upon by the learned counsel who showed cause against the rule, if our decision was in favour of a prohibition, only to order a declaration in prohibition, & formerly we should unquestionably have done so. But now that our order can be considered on appeal in the same manner as if the question were raised upon the record, we see no reason to do this. It would lead to great delay & such delay ought to be prevented unless some advantage can be derived from it. We do not see how the question can be better raised than on the present application. We therefore feel bound to act upon the conclusion at which we have arrived & to direct the prohibition to issue. The Q. B. Div. has, we understand, acted upon this view & declined to order a declaration in prohibition for the purpose of raising a question of difficulty & importance (*per CUR.*).—*TOOMER v. LONDON, CHATHAM & DOVER RY. CO.* (1877), 2 Ex. D. 450; 47 L. J. Q. B. 276; 37 L. T. 161; 20 W. R. 31; 3 Ry. & Can. Tr. Cas. 79.

Annotation:—Reid. *Warwick Canal Co. v. Birmingham Canal Co.* (1879), 5 Ex. D. 1.

2382. ———.]—We have not called upon *appcts.* to declare in prohibition as, in consequence of the ct. being divided in opinion, we might otherwise have done, because the facts not being in dispute, the question is solely one of law, & as the parties can, under Jud. Act, 1873 (c. 66), go direct to the appellate ct. on an appeal, it is better to leave them to do so without putting them to the expense, inconvenience & delay of a proceeding by way of declaration (COCKBURN, C.J.).—*MARTIN v. MACKONCHIE* (1878), 3 Q. B. D. 730; 49 L. J. Q. B. 9; 39 L. T. 147; 42 J. P. 564; *reversd.* on other grounds (1879), 4 Q. B. D. 697, C. A.; *sub nom.* MACKONCHIE v. PENZANCE (LORD) (1881), 6 App. Cas. 424, H. L.

2383. Right to declaration from applicant for writ.]—When the ct. is clearly of opinion that there is sufficient ground for the prohibition *deft.* has a right to put *pltf.* to declare, that his jurisdiction may not be taken away from him, in a summary way where no writ of error will lie (LORD MANSFIELD).—*ST. JOHN'S COLLEGE, CAMBRIDGE v. TODINGTON* (1757), 1 Burr. 158; 1 Keny. 441; 97 E. R. 245; *sub nom.* R. v. ELY (BP.), 1 Wm. Bl. 71.

Annotations:—Consd. *Worthington v. Jeffries* (1875), L. R. 10 C. P. 379. *Reid.* *Remington v. Dolby* (1844), 9 Q. B. 176. *Mentd.* *R. v. St. Catherine's Hall, Cambridge* (1791), 4 Term Rep. 233; *Re Catherine Hall, Ex p. Ingo* (1831), 2 Russ. & M. 590; *R. v. Hertford College* (1878), 3 Q. B. D. 693.

2384. ———.]—Where a prohibition is applied for, the ct. will always, on the demand of the party against whom the application is made, put the

party applying to declare in prohibition.—**REMINGTON v. DOLBY** (1844), 9 Q. B. 176; 115 E. R. 1241; *sub nom. Re RIMINGTON & DALBY*, 14 L. J. Q. B. 5; *sub nom. R. v. EPISCOPAL & CONSISTORIAL COURT OF THE BISHOP OF LINCOLN (JUDGE)*, **REMINGTON v. DALBY**, 8 Jur. 1135; *subsequent proceedings, sub nom. DOLBY v. REMINGTON* (1846), 9 Q. B. 179.

Annotations.—**Consd.** **Worthington v. Jeffries** (1875), L. R. 10 C. P. 379. **Refd.** **Rutland v. Bagshaw** (1850), 14 Q. B. 869.

2385. — **Waiver of.**—Upon showing cause against a prohibition, the ct. made the rule absolute, with a direction that pltf. should declare in prohibition. He tendered a declaration, but deft. refused it, & applied to stay proceedings, as being willing to submit. The other insisted he had a right to go on, & so get at the costs of the motion, which he could not otherwise have:—**Held**: the proceedings would be stayed without costs, the direction to declare being in favour of deft., who might waive it.—**GEGGE v. JONES** (1741), 2 Stra. 1149; 93 E. R. 1093.

Annotation.—**Refd.** **Pewtress v. Harvey** (1830), 1 B. & Ad. 154.

2386. Amendment of plea to declaration.—The ct. will direct a plea to a declaration in prohibition to be amended, in order to bring the question to be tried regularly before the ct.—**NEWSON v. BAWLDREY** (1702), 7 Mod. Rep. 69; **Sett. & Rem.** 261; 87 E. R. 1101.

SUB-SECT. 8.—THE RULE NISI.

2387. Whether grounds for issuing must be stated in.—It is not necessary that the grounds for issuing it should appear in a rule or order for a prohibition.—**EVERSFIELD v. NEWMAN** (1858), 4 C. B. N. S. 418; 140 E. R. 1147; *sub nom. Re EVERSFIELD, EVERSFIELD v. NEWMAN*, 31 L. T. O. S. 135.

2388. — **]**—The grounds of granting a rule nisi for a prohibition, should be stated, according to modern practice, in the rule.—**R. v. KENSINGTON INCOME TAX COMRS.**, [1914] 3 K. B. 429; 83 L. J. K. B. 1439; 111 L. T. 393; 30 T. L. R. 574, C. A.; *affd. sub nom. KENSINGTON INCOME TAX COMRS. v. ARAMAYO*, [1916] 1 A. C. 215, H. L.

Annotation.—**Refd.** **R. v. St. Giles & St. George's, Bloomsbury Additional & General Income Tax Comrs.**, *Ex p. Hooper* (1915), 31 T. L. R. 565.

SUB-SECT. 9.—SETTING ASIDE.

2389. Jurisdiction to set aside—Superior courts of common law.—A writ of prohibition issued out of the Ct. of Ch. is a proceeding within Petty Bag Act, 1849 (c. 109), s. 39, & the superior cts. of common law have jurisdiction to set aside such writ when improperly issued.—**Re BADDELEY**,

BADDELEY v. DENTON (1849), 4 Exch. 508; 7 Dow & L. 210; 4 New Mag. Cas. 29; 19 L. J. Ex. 44; 14 L. T. O. S. 256; 154 E. R. 1314.

Annotations.—**Apprvd.** **Garrard v. Tuck** (1850), 8 C. B. 231. **Refd.** **Still v. Booth** (1850), 19 L. J. Q. B. 521.

2390. — **Judge at chambers.**—A judge sitting at chambers has jurisdiction to set aside a writ of prohibition issued out of the Petty Bag Office.—**AMSTELL v. LESSER** (1885), 16 Q. B. D. 187; 55 L. J. Q. B. 114; 53 L. T. 759; 34 W. R. 230; 2 T. L. R. 198, D. C.

2391. — **On transfer of cause from one judge to another.**—A writ of prohibition to restrain a suit in the Lord Mayor's Ct. having issued pursuant to an *ex p.* order of Malins, V.-C., pltf. gave notice of motion to discharge the writ. The motion came on before Fry, J., who was taking the business of Malins, V.-C., under an order of transfer, which provided that no order made by the V.-C. should be varied or reversed otherwise than by the Ct. of Appeal. Fry, J., doubted whether he had jurisdiction, & dismissed the case to be mentioned to the Ct. of Appeal:—**Held**: Fry, J., had full jurisdiction to deal with the case.—**HART v. SCEPTRE & LICENSED VICTUALLERS & GENERAL FIRE INSURANCE CO.**, [1879] W. N. 50, C. A.

2392. Grounds for—Omitting to plead jurisdiction.—**CREESE v. IRVIN** (1787), 7 Ves. 258; 32 E. R. 105.

Annotation.—**Refd.** **London Corpn. v. Cox** (1861), 16 W. R. 44.

2393. — **Improper issue.**—**Re BADDELEY, BADDELEY v. DENTON**, No. 2389, *ante*.

2394. — **No excess of jurisdiction—Cause of prohibition not stated on face of writ.**—**STILL v. BOOTH**, No. 2165, *ante*.

2395. — **Excess of jurisdiction in facts & law—Discretion of court.**—**CHAMBERS v. GREEN**, No. 2337, *ante*.

2396. — **Ex parte issue—Not if prima facie regular & containing good grounds for prohibition.**—A prohibition issued out of the Petty Bag Office which upon its face appears to be regular, & contains a good ground for prohibition, will not be set aside, though issued *ex p.*—**SWAIN v. COX** (1850), 15 L. T. O. S. 260.

SUB-SECT. 10.—APPEALS.

2397. From order of Divisional Court—To Court of Appeal.—An appeal lies from the decision of the Div. Ct. on an application for a prohibition to a county ct., for County Cts. Act, 1856 (c. 108), s. 42, relates to procedure only, & does not enact that the judgment of the Div. Ct. shall be final.—**BARTON v. TITMARSH** (1880), 49 L. J. Q. B. 573; 42 L. T. 610; 28 W. R. 821, C. A.

See, also, No. 2200, *ante*.

2398. From judge of Admiralty Division—To Court of Appeal.—**THE RECEPTEA**, No. 2346, *ante*.

2399. From judge in chambers—To Divisional

—A county ct. was prohibited from committing a clerk of assize; the clerk was privileged from arrest only while engaged in his official duties, or while going to & returning from his office. He was arrested while not so employed:—**Held**: the prohibition must be set aside.—**Re MACRAY v. GOODSON** (1868), 27 U. C. R. 263.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 10.

k. From single judge—Service of notice of appeal.—In appealing from the decision of a single judge discharging a rule nisi for a writ of prohibition, it is necessary to serve the judge of the inferior ct., as well as

PART VIII. SECT. 8, SUB-SECT. 8.

2387.1. Whether grounds for issuing must be stated in.—A rule nisi for prohibition need not state grounds. It is enough to show in the affidavits a *prima facie* case of error or mistake on the part of the inferior ct.—**R. v. TAYLOR, Ex p. BLAIN** (1879), 5 V. L. R. 271.—**AUS.**

h. A second rule nisi for prohibition may be granted after discharge of the first for irregularities in the affidavits.—Where an application for a writ of prohibition has not been adjudicated upon *e.g.* where the rule nisi has been discharged on account of irregularities in the affidavits on which it was

granted, the ct. will not refuse to entertain a second application on new affidavits being presented in a regular form.—**FORSTER v. NEWMAN** (1908), 10 W. A. L. R. 166.—**AUS.**

PART VIII. SECT. 8, SUB-SECT. 9.

2394.1. Grounds for—No excess of jurisdiction.—Where the judge had acted within his jurisdiction in determining whether a garnishee was indebted to the primary creditor & whether the debt was attachable:—**Held**: a writ of prohibition must be discharged.—**BLAND v. ANDREWS** (1880), 45 U. C. R. 431.—**CAN.**

2394.2. — **No want of jurisdiction.**]

: Sub-sects. 10 & 11. Sect. 9.]

Court—Without leave.]—MORTON v. EMANUEL (1898), 43 Sol. Jo. 97, D. C.

2400. — Not "matter of practice or procedure."—An application to a judge at chambers for a prohibition to restrain an inferior ct. from exceeding its jurisdiction is not a matter of practice or procedure within Supreme Ct. of Judicature (Procedure) Act, 1894 (c. 16), s. 1 (4), & an appeal lies to the Div. Ct. & not, in the first instance, to the Ct. of Appeal.—**WATSON v. PETTS**, [1899] 1 Q. B. 54; 67 L. J. Q. B. 970; 79 L. T. 330; 47 W. R. 68; 15 T. L. R. 31; 43 Sol. Jo. 27, C. A.; *subsequent proceedings*, [1899] 1 Q. B. 430.

Annotations:—*Consd.* **Morton v. Emanuel** (1898), 43 Sol. Jo. 97. *Appld.* **Long v. G. N. & City Ry.**, [1902] 1 K. B. 813; *Re Frere & Staveley Taylor & North Shore Mill Co.*, [1905] 1 K. B. 366. *Distd.* **Yonge v. Toynbee**, [1910] 1 K. B. 215. *Refd.* *Re Marchant*, [1908] 1 K. B. 998; *Re Jackson*, [1915] 1 K. B. 371.

2401. Not where costs only involved—& no mistake in law.]—The ct., having made absolute a rule for prohibition at the instance of applts. against resp. justices, refused to order them to pay applts.' costs.—*Held*: an appeal did not lie, as there had been no mistake of law, & the ct. had exercised its judicial discretion.—**RIEKEN v. YORKE PENINSULA JJ., KEAM v. ADELAIDE LICENSING JJ.**, [1908] A. C. 454; 78 L. J. P. C. 45; 99 L. T. 529; 24 T. L. R. 821, P. C.

2402. Not from order in "criminal cause or matter"—Judicature Act, 1873 (c. 66), s. 47.]—A judgment of the K. B. Div. refusing to issue to a magistrate a writ of prohibition against proceeding with the hearing of a criminal charge is a judgment in a "criminal cause or matter" within the above sect. & therefore by that sect. is not subject to appeal.—**R. v. GARRETT, Ex p. SHARF**, [1917] 2 K. B. 99; 86 L. J. K. B. 894; 116 L. T. 398; 81 J. P. 145; 33 T. L. R. 305; 25 Cox, C. C. 627, C. A.

Annotation:—*Refd.* *Re Clifford & O'Sullivan*, [1921] 2 A. C. 570.

Compare Nos. 1735-1739, ante.

Appeal as alternative to prohibition.]—See Sect. 2, ante.

pltf., with notice of the appeal.—**GIBBINS v. CHADWICK** (1892), 8 Man. L. R. 213.—**CAN.**

1. Time for.]—Notice of appeal from an order for the issue of a writ of prohibition was not given until more than ten days after the party intending to appeal had notice.—*Held*: there being no particular merit shown, it was not a case for indulgence, & the motion to quash the appeal should be granted.—**R. v. PELTON** (1912), 11 E. L. R. 585; 8 D. L. R. 77; 20 Can. Crim. Cas. 239.—**CAN.**

8. SUB-SECT. 11.

2403 i. Discretion of court to award—Upon making rule absolute.]—Where an order nisi to prohibit was obtained on two grounds, but was made absolute on one ground only & failed on the other, no costs were given.—**R. v. PANTON, Ex p. GOOD** (1885), 11 V. L. R. 227.—**AUS.**

2403 ii. ——A successful party on an application for a writ of prohibition is entitled to & should be awarded costs, unless the ct. in the proper exercise of a wise discretion can see good cause for depriving such party of them; & such party should not be deprived of costs unless there appear impropriety of conduct which induced the litigation, or impropriety

in the conduct thereof.—*Re McLEOD v. ENIGH* (1888), 12 P. R. 503.—**CAN.**

2403 iii. ——Where pltf. in the ct. below was not to blame, costs may be refused in making absolute a rule for prohibition.—**GREGG v. KRULL**, 1 J. R. 132.—**N.Z.**

2403 iv. — Unmeritorious defence.]—A summons for a writ of prohibition was made absolute without costs, there being no meritorious defence.—**KINSEY v. ROCHE** (1881), 8 P. R. 515.—**CAN.**

2403 v. — Where asked for.]—There is no doubt as to the power of the ct. to grant costs in prohibition where the rule asks for costs.—*Re CAVERSHAM ROAD BOARD v. KENNEDY*, 2 J. R. N. S. 173.—**N.Z.**

2403 vi. — Reference by judge in chambers to court in banc.]—A conviction was removed by certiorari. The prosecutor applied to a judge of the Supreme Ct. at chambers for a writ of prohibition, to prohibit further proceedings on the certiorari, & the order nisi for the writ of prohibition was, by a judge at Chambers, referred to the ct. in banc.—*Held*: the writ of prohibition must be allowed, but without costs.—**R. v. O'NEIL** (1888), 20 N. S. R. 530.—**CAN.**

m. Whether applicant entitled to—When question of jurisdiction not raised

SUB-SECT. 11.—COSTS.

See, now, Judicature Act, 1890 (c. 44), s. 5.

2403. Discretion of court to award—Upon making rule absolute.]—WALLACE v. ALLEN, No. 2364, *ante*.

2404. ——**R. v. LONDON COUNTY JJ. & LONDON COUNTY COUNCIL**, No. 2341, *ante*.

2405. Right of judge to—Jurisdiction challenged.]—DALE'S CASE, ENRAGHT'S CASE, No. 809, *ante*.

2406. Whether plaintiff entitled to—When partly successful.]—Pltf. in prohibition, although succeeding only in part, is entitled to costs from the original motion for the prohibition.—**MIDDLETON v. CROFT** (1737), *Lee temp. Hard.* 395; *Andr.* 57; 2 Stra. 1056; 95 E. R. 255.

Annotations:—*Mentd.* **R. v. York Archbp.** (1705), 6 Term Rep. 490; **Wynn v. Davies** (1835), 1 Curt. 69; **Dakins v. Seaman** (1842), 9 M. & W. 777; *It. v. Chadwick* (1846), 11 J. P. 140; **Marshall v. Exeter Bp.** (1860), 7 C. B. N. S. 653; **Shepherd v. Payne** (1863), 9 Jur. N. S. 354; **Exeter Bp. v. Marshall** (1868), L. R. 3 H. L. 17; **R. v. Allen** (1872), L. R. 8 Q. B. 69; **R. v. Shouldham** (1872), 37 J. P. 310; **R. v. Morton** (1873), 42 L. J. M. C. 58; **Jenkins v. Cook** (1875), L. R. 4 A. & E. 463; **Maakonochie v. Penzance** (1881), 6 App. Cas. 424; **R. v. York Archbp.** (1888), 20 Q. B. D. 740; **Kutner v. Phillips**, [1891] 2 Q. B. 267; **Er p. Brinkman** (1895), 11 T. L. R. 387; **Marshall v. Graham, Bell v. Graham**, [1907] 2 K. B. 112; **R. v. Dibdin**, [1910] P. 57.

2407. ——Pltf. in prohibition is not allowed his costs where, though he succeeded in a minor point, he failed as to the main object.—**FREE v. BURGOYNE** (1828), 2 Bli. N. S. 65; 1 Dow. & Cl. 115; 4 E. R. 1055, H. L.; *affg.* (1826), 5 B. & C. 400; *subsequent proceedings* (1830), 2 Hag. Ecc. 662.

Annotations:—*Mentd.* **Oliver & Toll v. Hobart** (1827), 1 Hag. Ecc. 43; **Ferguson v. Kinnoull** (1842), 9 Cl. & Fin. 251; **Burder v. —** (1844), 3 Curt. 822; **Barnes v. Shore** (1846), 8 Q. B. 640; **Doe d. Hudson v. Roe** (1852), 18 Q. B. 806; **Walsh v. Ionides** (1853), 1 E. & B. 383; **Wilmot v. Rose** (1854), 3 E. & B. 563; **Bonwell v. London Bp.** (1861), 14 Moo. P. C. C. 395; **Pusey v. Jowett** (1863), 1 New Rep. 488; **Maakonochie v. Penzance** (1881), 6 App. Cas. 424.

2408. To what costs successful party entitled—Not costs of motion to set aside order—Staying proceedings on payment of costs.]—Where it was made a term on enlarging a rule for a prohibition, that the party applying should declare, & he did declare, & deft. instead of pleading obtained a judge's order for staying proceedings upon payment of costs incurred since the rule to declare, upon motion to set aside that order.—*Held*:

*in inferior court.]—*A prohibition may go in the first instance without the question of jurisdiction being raised by any proceeding in the ct. below; but when a party applies without having raised the question there, he will not be allowed costs.—**NERLICH v. CLIFFORD** (1874), 6 P. R. 212.—**CAN.**

n. ——*Re MURPHY & CORNISH* (1881), 8 P. R. 420.—**CAN.**

o. ——A party who applies for prohibition without raising the question of jurisdiction in the ct. below & having it decided there, is not entitled to costs if no cause be shown to the rule.—**MASSEY MANUFACTURING CO. v. HANNA** (1891), 7 Man. L. R. 572.—**CAN.**

2408 i. To what costs successful party entitled—Not costs of application—Where plaintiff compelled to sue in court restrained.]—Pltf. was obliged to sue in a division ct. at the risk of prohibition; the action was prohibited.—*Held*: deft. should get no costs of the motion for prohibition, unless he should successfully resist the suit to be subsequently brought.—**Re YOUNG v. MORDEN** (1884), 10 P. R. 276.—**CAN.**

p. When successful party not entitled—When guilty of delay.]—A. applied for a prohibition.—*Held*: (1) entitled to a prohibition; (2) as he

pltf. in prohibition was not entitled to any further costs.—*PEWTERESS v. HARVEY* (1830), 1 B. & Ad. 154; 8 L. J. O. S. K. B. 375; 109 E. R. 744.

Annotations:—*Consd. White v. Steele* (1862), 13 C. B. N. S. 231. *Refd. Ex p. Everton Overseers* (1871), L. R. 6 C. P. 245. *Mentd. London Corpn. v. Cox* (1887), L. R. 2 H. L. 239.

2409. — *Not costs incurred in inferior court.*—1 Will. 4, c. 21, does not enable the ct., where a party has declared in prohibition & succeeded, to grant him his costs incurred in the inferior ct.—*TESSIMOND v. YARDLEY* (1833), 5 B. & Ad. 458; 110 E. R. 860.

Annotation:—*Consd. White v. Steele* (1862), 13 C. B. N. S. 231.

2410. — *Pltf., though successful in prohibition in a ct. above, is not entitled, under 1 Will. 4, c. 21, s. 1, to recover, as damages, the costs incurred by him in previous unsuccessful proceedings, in the same case in the Consistory & Arches Courts.*—*WHITE v. STEELE* (1862), 13 C. B. N. S. 231; 32 L. J. C. P. 1; 7 L. T. 275; 9 Jur. N. S. 648; 11 W. R. 8; 143 E. R. 92.

2411. — *Not costs of first trial—Where new trial granted without mentioning costs.*—General Rules of Hilary Term, 1832, Part I., r. 64, that where a new trial is granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party though he succeed on the second, applies to issues in prohibition.—*Craven v. Sanderson* (1838), 7 Ad. & El. 880, 897, n.; 112 E. R. 700, 707.

Annotation:—*Mentd. Re Sandbach School & Almshouse Foundation, A-G. v. Crewe*, [1901] 2 Ch. 317.

2412. — *Costs of application—Without obtaining rule.*—The party in whose favour judgment is given in an action of prohibition is entitled to the costs of the application for a writ of prohibition without obtaining a rule for such costs.—*Re INMAN, Ex p. TUCKER* (1842), 4 Man. & G. 1079; 134 E. R. 442.

2413. *Personal liability of solicitor for.*—*Semble*: the attorney of a pltf. in the Mayor's Ct., against whom a prohibition has been obtained upon facts within the knowledge of such attorney is personally liable for the costs of such prohibition.—*ROBINSON v. EMANUEL* (1874), L. R. 9 C. P. 414; 43 L. J. C. P. 244; 30 L. T. 500.

Annotations:—*Refd. R. v. County of London JJ. & L. C. C.*, [1894] 1 Q. B. 453. *Mentd. Evans v. Nicholson* (1875), 32 L. T. 664; *Hawes v. Paveley* (1876), 46 L. J. Q. B. 18.

2414. — *KELSEY v. BRIAN* (1875), 32 L. T. 665, n.

had applied to the inferior ct. judge for a new trial, & in view of delay, he was refused his costs of the application.—*ROBERTSON v. CORNWELL* (1878), 7 P. R. 297.—CAN.

a. — *Taxed costs—Without obtaining rule.*—Taxed costs allowed on dismissing a summons in chambers for prohibition.—*MEWHINNEY v. ROSE*, 4 J. R. N. S. 13.—N.Z.

r. *Rule nisi for prohibition dismissed with costs.*—*Re MURPHY* (1910), 8 E. L. R. 586.—CAN.

s. *Whether awarded when prohibition refused—Defendant not appearing at trial & guilty of delay.*—Deft. entered a notice objecting to the jurisdiction of the ct., but did not appear at the trial, when the judge, upon proof of such facts as established a *prima facie* case of jurisdiction, entered judgment in favour of pltf. On motion for prohibition for want of jurisdiction:—*Held*: deft. being himself to blame, & not showing a good defence on the merits, nor despatch used in making

2415. — *The order for the costs of prohibition will not be made against pltf.'s solr. personally, unless the rule has been moved for in that form & the solr. has had an opportunity of showing cause.*—*ROGERS v. LONDON, CHATHAM & DOVER RY. Co.* (1877), 26 W. R. 192.

SECT. 9.—HOW ENFORCED.

2416. *By attachment—Proceeding after writ delivered.*—There are two things in prohibition, (a) contempt of the Crown, & disherison of it in taking on them judicial power where they have no right; (b) is a damage to the party; & a suit for this must be brought before a temporal ct., & the party prays a prohibition, & whether deft. proceeded or not after the prohibition, an attachment goes to bring him into ct.; if he has proceeded after the writ delivered, that is a contempt; but still it is matter examinable whether the ct. have or have not a jurisdiction; if it have not, the ct. will finally prohibit & give satisfaction to the party; the party is not to have damages if they have jurisdiction, but if they have none, they have acted against the prohibition of law, & done the party wrong (*PRATT, C.J.*).—*EDE v. JACKSON* (1724), *Fortes. Rep.* 345; 92 E. R. 883.

Annotations:—*Refd. Wadsworth v. Spain* (Queen), *De Haber v. Portugal* (Queen) (1851), 17 Q. B. 171; *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239.

2417. — *A party proceeding in an inferior ct. after prohibition is liable to attachment for contempt & also to a special action on the case, at the suit of the opposite party, for his unjust vexation.*—*DOWNES v. HACKSEBY* (1614), 2 Bulst. 289; 80 E. R. 1129.

2418. — *In an attachment upon a prohibition the party shall recover damages & costs against the party for proceeding after the prohibition awarded.*—*FACY v. LANGE* (1639), *Cro. Car.* 559; 79 E. R. 1080.

Annotations:—*Refd. Anon.* (1700), 12 Mod. Rep. 348; *Dublin (Archbp.) v. Dublin (Dean)* (1720), 1 Stra. 262.

2418a. *S. P. HEYWOOD v. FOSTER* (1693), 3 Lev. 360; 83 E. R. 730.

Attachment & committal generally, see CONTEMPT OF COURT, ATTACHMENT & COMMITTAL, pp. 46 *et seq.*, ante.

the application, the motion was refused with costs.—*FRIENDLY v. NEEDLER* (1884), 10 P. R. 267.—CAN.

t. — *Where suit brought in court known to be without jurisdiction.*—The practice of suing in a ct. known to have no jurisdiction is not one that should be encouraged; & motion for prohibition may be dismissed without costs.—*Re CANADIAN OIL Cos. v. McCONNELL* (1912), 27 O. L. R. 549.—CAN.

Part IX.—Certiorari.

SECT. 1.—IN GENERAL.

2419. Nature & objects.—It is the undoubted prerogative of the Crown to see that all inferior jurisdictions are kept within their proper bounds, & on that principle the whole doctrine of *certiorari* proceeds (FOSTER, J.).—*R. v. BERKLEY & BRAGGE*, No. 2478, *post*.

2420. —.—*R. v. PLUMBE*, No. 3139, *post*.

2421. —.—(1) A *certiorari* will lie to bring up an order made by licensing justices under Licensing Act, 1904 (c. 23), s. 1 (2), referring an application for renewal of a licence to quarter sessions.

(2) *Semble*, no ground for the issue of a *certiorari* to bring up a licence granted by licensing justices is afforded by the fact that the justices have erroneously decided that appt. for the licence was such a person or such an occupier as is required by Alehouse Act, 1828 (c. 61), s. 1, & Beerhouse Act, 1840 (c. 61), s. 1.

(3) The writ of *certiorari* is a very ancient remedy, & is the ordinary process by which the High Ct. brings up for examination the acts of bodies of inferior jurisdiction. In certain cases the writ of *certiorari* is given by statute, but in a large number of cases it rests on the common law. It is frequently spoken of as being applicable only to "judicial acts," but the cases by which this limitation is supposed to be established show that the phrase "judicial act" must be taken in a very wide sense, including many acts that would not ordinarily be termed "judicial." For instance, it is evidently not limited to bringing up the acts of bodies that are ordinarily considered to be cts. From very early times the common law cts. considered that they had jurisdiction to examine

into rates by *certiorari*. The procedure of *certiorari* applies in many cases in which the body whose acts are criticised would not ordinarily be called a ct., nor would its acts be ordinarily termed "judicial acts." The true view of the limitation would seem to be that the term "judicial act" is used in contrast with purely ministerial acts. To these latter the process of *certiorari* does not apply, as for instance to the issue of a warrant to enforce a rate, even though the rate is one which could itself be questioned by *certiorari*. In short, there must be the exercise of some right or duty to decide in order to provide scope for a writ of *certiorari* at common law (FLETCHER MOULTON, L.J.).

(4) Under the provisions of Jud. Act, 1875 (c. 77) & the rules, the High Ct. & the Ct. of Appeal have power to award costs on making a rule absolute for a *certiorari* (*per CUR.*).—*R. v. WOODHOUSE*, [1906] 2 K. B. 501; 75 L. J. K. B. 745; 95 L. T. 367, 399; 70 J. P. 485; 22 T. L. R. 603, C. A.; *revsd.* on other grounds, *sub nom.* LEEDS CORPN. v. RYDER, [1907] A. C. 420, H. L.

Annotation.—*Generally*, *Mentd.* *R. v. JACKSON* (1906), 96 L. T. 77.

—**Review of judicial & ministerial proceedings.**]

—*Sec* Sect. 6, sub-sect. 2, A., *post*.

2422. Not available when alternative remedy pursued—Application to magistrate to state case.—Where an application to a magistrate to state a case had been granted:—*Held*: a *certiorari* would not be granted.—*R. v. THOMAS* (1901), 18 T. L. R. 71, D. C.

Annotation.—*Consd.* *R. v. PART* (1906), 70 J. P. 398.

Where remedy by certiorari open to applicant—Mandamus not granted.—*See* Part VI., Sect. 1, sub-sect. 3, F. (b) v., *ante*.

PART IX. SECT. 1.

2419 i. Nature & objects.—*Certiorari* is not a means of appeal from a judgment or decision that is positively declared by statute to be final & conclusive.—*R. v. HOBART CORPN.*, *Ex p.* ROMAN CATHOLIC CHURCH TRUSTEES & HOBART (ARCHBP.) (1918), 14 Tas. L. R. 115.—*AUS.*

2419 ii. —.—*Certiorari* is the appropriate remedy to raise the question of jurisdiction, e.g., whether proper service has been made & jurisdiction over the person acquired, or whether the judge was disqualified through interest.—*Re RUGGLES* (1902), 35 N. S. R. 57.—*CAN.*

a. Whether available where alternative remedy—Remedy by appeal.—*R. v. CHAPMAN* (1858), 2 Thom. 292.—*CAN.*

b. —.—*Ex p.* NOWLIN (1864), 6 All. 141.—*CAN.*

c. —.—*Ex p.* THOMAS (1870), 13 N. B. R. 163.—*CAN.*

d. —.—*Re* ANTIGONISH SCHOOL RATE ASSESSMENT (1872), 9 N. S. R. 122.—*CAN.*

e. —.—*EAGAR v. CAREY* (1879), 13 N. S. R. (1 R. & G.) 49.—*CAN.*

f. —.—*R. v. LIMERICK, Ex p. ROMANUS* (1917), 45 N. B. R. 269.—*CAN.*

g. —.—*R. v. DUBLIN CORPN.*, [1911] 2 I. R. 245.—*IR.*

h. —.—*Unless in exceptional circumstances.*—*Ex p.* WILSON (1877), 1 P. & B. 274.—*CAN.*

k. —.—*WIGGINS v. WINDSOR CORPN.* (1882), 3 R. & G. 256.—*CAN.*

l. —.—*Ex p.* PRICE (1883), 23 N. B. R. 85.—*CAN.*

m. —.—*R. v. STARKEY* (1890), 6 Man. L. R. 588.—*CAN.*

n. —.—*Ex p.* LEVESQUE (1893), 32 N. B. R. 174.—*CAN.*

o. —.—*Ex p.* YOUNG (1893), 32 N. B. R. 178.—*CAN.*

p. —.—*R. v. HERRELL* (1899), 12 Man. L. R. 522.—*CAN.*

q. —.—*JOHNSTON v. O'REILLY* (1906), 4 W. L. R. 569; 16 Man. L. R. 405.—*CAN.*

r. —.—*R. v. MURRAY, Ex p. DAMBOISE* (1909), 7 E. L. R. 167.—*CAN.*

s. —.—*Certiorari* will not be granted with a view of quashing a judgment of an inferior ct. for want of jurisdiction in the trial justice in the absence of a satisfactory explanation of why the remedy by review was not taken.—*Ex p.* BELONI (1915), 43 N. B. R. 517.—*CAN.*

t. —.—*R. v. HANSON, Ex p. DUNSTER* (1919), 49 D. L. R. 161.—*CAN.*

u. —.—*R. v. TOY KING*, [1921] 1 W. W. R. 796; 34 Can. Crim. Cas. 207.—*CAN.*

v. —.—*R. v. LARSON*, [1921] 2 W. W. R. 226; 14 Sask. L. R. 274.—*CAN.*

w. —.—*R. v. EREMENKO*, [1921] 2 W. W. R. 519; 14 Sask. L. R.

331.—*CAN.*

x. —.—While the existence of a right of appeal is sometimes said to prevent the exercise of the power of the *certiorari* as a matter of discretion, unless there are exceptional circumstances, such circumstances may always be said to exist where there is either lack of jurisdiction or such irregularity in the proceedings as touches the substantial rights of the party, so that he may be said to have been aggrieved.—*DIERKS v. ALTERMATT* (1918), 1 W. W. R. 719.—*CAN.*

y. —.—The ct. in a proper case may review proceedings under *certiorari* notwithstanding that there is an appeal.—*Re MARITIME FISH CORPN., LTD.* (1919), 53 N. S. R. 15.—*CAN.*

z. Not available when alternative remedy pursued—Appeal.—*STEWART v. BLACKBURN* (1865), 25 U. C. R. 16.—*CAN.*

aa. —.—While an appeal is pending *certiorari* to quash the order appealed from will not be granted even though the order is bad on its face.—*R. v. MONAGHAN JJ.* (1906), 40 I. L. T. 51.—*IR.*

2422 i. —.—*Application for case stated.*—*R. v. GAINOR*, [1919] 1 W. W. R. 801.—*CAN.*

bb. —.—*Judgment on case stated.*—Where on case stated a conviction is upheld *certiorari* will not lie for the same grounds as in case stated.—*R. v. MONAGHAN* (1897), 3 Terr. L. R. 43.—*CAN.*

SECT. 2.—PROCEEDINGS IN NATURE OF CERTIORARI.

See C. O. R., r. 17.

2423. Removing indictments—Without order—Transmission by justices to county assizes.]—Indictments were found against a prisoner at quarter sessions & transmitted to the assizes by the justices:—*Held*: although the indictments were not removed by *certiorari*, the judges of assize should have tried prisoner on these indictments.—*R. v. WETHERELL* (1819), Russ. & Ry. 381.

2424. — By order in lieu of certiorari—Jurisdiction of King's Bench—Central Criminal Court Act, 1834 (c. 36).]—*R. v. SILL*, No. 2525, *post*.

2425. — — — — — Judicature Act, 1873 (c. 66), s. 16.]—Two prisoners were indicted for wilful murder, & on the trial the jury returned a special verdict, stating the facts, & referred the matter to the ct. On the argument of the special verdict it was objected that the record ought to have been brought up into the Q. B. Div. by *certiorari*, & not by mere order of the ct.:—*Held*: the record was rightly brought up by order, & not by *certiorari*, since by the Jud. Act, 1873 (c. 66) the cts. of oyer & terminer & gaol delivery were made part of the High Ct. of Justice.

It was objected that the record should have been brought into this ct. by *certiorari*, & that in this case no writ of *certiorari* had issued. The fact is so, but the objection is groundless. Before the passing of Jud. Act, 1873, as the cts. of oyer & terminer & gaol delivery were not parts of the Ct. of Q. B., it was necessary that the Q. B. should issue its writ to bring before it a record not of its own, but of another ct. But by sect. 16 of the above Act, the cts. of oyer & terminer & gaol delivery are now made part of the High Ct., & their jurisdiction is vested in it. An order of the ct. has been made to bring the record from one part of the ct. into this chamber, which is another part of the same ct.; the record is here in obedience to that order; & we are all of opinion that the objection fails (LORD COLERIDGE, C.J.).—*R. v. DUDLEY & STEPHENS* (1884), 14 Q. B. D. 273; 54 L. J. M. C. 92; 52 L. T. 107; 49 J. P. 69; 33 W. R. 347; 1 T. L. R. 118; 15 Cox, C. C. 624, C. C. R.

*Annotations:—*Consid. *R. v. Brooke* (1894), 59 J. P. 6. *Reid. R. v. Steventon Parish* (1885), 1 T. L. R. 395; *R. v. Jameson* (1896), 60 J. P. 677. *Mentd. Allen v. Flood*, [1898] A. C. 1.

2426. Removing orders of quarter sessions—By order in lieu of certiorari—Quarter Sessions Act, 1849 (c. 45), s. 18.]—When a judge's order or rule of this ct. is made under the above sect. for the removal of an order of quarter sessions into this ct. for the purpose of enforcing it, it is not necessary that any *certiorari* should issue to remove the order of sessions.—*HAWKER v. FIELD* (1850), 1 L. M. & P. 606; 20 L. J. M. C. 41; 14 J. P. Jo. 702.

2427. — — — — —.]—In answer to a rule for removing into this ct., in order that it might be enforced under the above sect., an order of sessions quashing with costs an order of removal, it was shown that, at the hearing of an appeal against it, appts. applied for an amendment of their grounds of appeal, that the amendment was allowed & the appeal adjourned, that pending the adjournment resps. gave notice of abandonment, & that appts. nevertheless went to the

next session & got the order of removal quashed with costs:—*Held*: appts. ought to have proceeded under Poor Law Procedure Act, 1848 (c. 31), s. 8, & the rule must be discharged.

The sessions in making the orders acted entirely without jurisdiction, if, therefore, the order were brought up by *certiorari*, it would be quashed (ERLE, J.).—*R. v. ST. MICHAEL'S, PEMBROKE* (1852), 18 L. T. O. S. 262; 16 J. P. 150; 16 Jur. 87.

2428. — — — — —.]—HUNTLEY v. BINBROOK (CHURCHWARDENS) (1853), 21 L. T. O. S. 144; 17 J. P. Jo. 374; *sub nom. Re BINBROOKE APPEAL*, 1 W. R. 388.

2429. Transmission of case stated—By borough sessions—Summary Jurisdiction Act, 1879 (c. 49), s. 40.]—*R. v. BAKENDALE* (1880), 29 W. R. 335, D. C.

Removal of proceedings from county courts.]—See COUNTY COURTS, Vol. XIII., pp. 543 *et seq.*

SECT. 3.—WHO MAY ISSUE WRIT.

2430. House of Lords—Removal of case before King in Parliament.]—KINGSTON'S (DUCHESS) CASE (1776), 1 Leach, 146; 20 State Tr. 355.

*Annotations:—*Mentd. Galbraith v. Neville (1789), 1 Doug. K. 6, n.; Wilson v. Rastall (1792), 4 Term Rep. 753; White v. Hall (1806), 12 Ves. 321; R. v. Knappott (1824), 2 B. & C. 883; Stafford v. Clark (1824), 9 Moore, C. P. 724; Bland v. Lynam (1827), 5 L. J. O. S. C. P. 87; Martin v. Nicolls (1830), 3 Sim. 458; Thompson v. Blackhurst (1833), 1 Nev. & M. K. B. 266; Bandon v. Becher (1835), 9 Bl. N. S. 532; Doe d. Peter v. Watkins (1837), 3 Bing. N. C. 421; R. v. Wye (1838), 7 Ad. & El. 761; R. v. Caley (1841), 5 Jur. 709; Hill v. Barry (1842), 7 Jur. 10; R. v. Sow (1843), 4 Q. B. 93; Meddowcroft v. Huguenin (1844), 4 Moo. P. C. C. 386; Robertson v. Struth (1844), Dav. & Mer. 772; Barrs v. Jackson (1845), 1 Ph 582; Tarry v. Newman (1846), 15 M. & W. 645; de Bode v. R. (1848), 13 Q. B. 364; Bailey v. Harris (1849), 13 Jur. 341; R. v. Smith O'Brien (1849), 7 State Tr. N. S. 1; R. v. Basingstoke (1850), 14 Q. B. 611; Bank of Australasia v. Nias (1851), 16 Q. B. 717; R. v. Blakemore (1852), 2 Den. 410; R. v. Haughton (1853), 1 E. & B. 501; Shedden v. Patrick (1854), 23 L. T. O. S. 194; R. v. Hartington Middle Quarter (1855), 4 E. & B. 780; Bremer v. Freeman (1857), 10 Moo. P. C. C. 306; Cammell v. Sewell (1858), 3 H. & N. 617; Routledge v. Hislop (1860), 2 E. & E. 549; Accidental Death Insa. Co. v. Mackenzie (1861), 5 L. T. 20; Howlett v. Tarte (1861), 10 C. B. N. S. 813; Hunter v. Stewart (1861), 4 De G. F. & J. 168; The Justyn (1862), 6 L. T. 553; Swan v. North British Australasian Co. (1862), 7 H. & N. 603; Rogers v. Hadley (1863), 9 Jur. N. S. 898; Simpson v. Fogo (1863), 8 L. T. 61; Sidhee Nuzur Ally Khan v. Ojoodhyaram Khan (1866), 10 Moo. Ind. App. 540; Patch v. Ward (1867), 3 Ch. App. 203; Finney v. Finney (1868), L. R. 1 P. & D. 483; Ochsnein v. Papelier (1873), 8 Ch. App. 695; Flitters v. Allfrey (1874), L. R. 10 C. P. 29; Leggett v. G. N. Ry. (1876), 1 Q. B. D. 599; R. v. Hutchings (1881), 6 Q. B. D. 300; Abouloff v. Oppenheimer (1882), 10 Q. B. D. 295; Priestman v. Thomas (1884), 9 P. D. 210; Caird v. Moss (1886), 33 Ch. D. 22; Seton v. Lafone (1886), 18 Q. B. D. 139; Borough v. Collins (1890), 15 P. D. 81; Kingston-upon-Hull Corpn. v. Harding (1892), 62 L. J. Q. B. 55; A.-G. for Trinidad & Tobago v. Eriché, [1893] A. C. 518; Wallis v. Hands (1893), 62 L. J. Ch. 586; Boswell v. Coaks (No. 2) (1894), 86 L. T. 365, n.; Ballantyne v. Mackinnon, [1896] 2 Q. B. 455; Dalton v. Fitzgerald (1897), 66 L. J. Ch. 604; N. E. Ry. v. Dalton Overseers, [1898] 2 Q. B. 66; Bynoe v. Bank of England, [1902] 1 K. B. 467; Turley v. Daw (1906), 94 L. T. 216; Hill v. Clifford, Clifford v. Timms, Clifford v. Phillips, [1907] 2 Ch. 236; Burdett v. Horne (1911), 27 T. L. R. 403; *In the Estate of Crippin*, [1911] P. 108; Bedford v. Cowtan, [1916] 1 K. B. 980; Isaac v. Salbstein, [1916] 2 K. B. 139; C. (otherwise H.) v. C., [1921] P. 399.

2431. King's Bench.]—Motion to quash or supersede a writ of *certiorari*, issuing out of the Ct. of Ch., to remove a plaint of replevin in the Mayor's Ct., London. Objection was taken to the writ

PART IX. SECT. 3.

*d. General rule.]—*Jurisdiction to grant *certiorari* is, in the absence of statutory provision, exclusively a matter belonging to superior cts.,

& if jurisdiction is conferred on inferior cts. by statute, clear words are necessary.—*ROSS v. BLAKE* (1896), 28 N. S. R. 543.—CAN.

2431 i. King's Bench.]—The supreme

ct. of V. has a general power to issue a writ of *certiorari* to any inferior ct. in the colony to bring up the proceedings of such ct., co-extensive with the like power of K. B. Div. in

Sect. 3.—Who may issue writ. Sect. 4.]

because the tenor of the record was only directed to be removed & not the record itself:—*Held*: (1) where a replevin was in a ct. of record it might be removed by *certiorari* issuing either out of the Ct. of K. B. or the Ct. of Ch.; (2) where the tenor of a record, instead of the record itself, was removed by *certiorari* out of an inferior ct., it was erroneous, as no proceedings could be had upon it, & the writ must be superseded & not quashed because it could not be quashed but on view of the record itself; (3) if a *certiorari* was brought in order to use the record only as evidence, the tenor, if returned, was sufficient as evidence of the record & would countervail the plea of *nul tiel record*.—*WOODCRAFT v. KINASTON* (1742), 2 Atk. 317; 9 Mod. Rep. 305; 26 E. R. 593, L. C.

Annotations:—As to (1) *Folld. Edwards v. Bowen* (1826), 2 Russ. 153. *Generally, Mendt. R. v. Hudson* (1815), 4 L. T. O. S. 353.

2432. — Though cause cannot be determined there—If inferior court has no jurisdiction.]—If inferior cts. have not jurisdiction of the cause the K. B. may grant a *certiorari*, though the cause cannot be determined there.—*Re GASSOCK* (1656), 1 Lilly's Register, 253, 363; Style's Practical Register, 4th ed. 154.

2433. Whether master of King's Bench—Removal of case from Mayor's Court into High Court.]

(1) An application was made to a master of the K. B. Div. for a writ of *certiorari* to remove into the High Ct. an action which had been commenced in the Mayor's Ct. The master made an order removing the action into the High Ct. On appeal from that order the judge in chambers held that he was not entitled to interfere with the exercise by the master of his discretion, & he accordingly dismissed the appeal:—*Held*: even if the master had jurisdiction to make the order for a *certiorari* the judge had power to exercise, & ought to have exercised, his own discretion with regard to the matter upon the hearing of the appeal.

(2) *Qu.*: whether an application for a writ of *certiorari* to remove a case from the Mayor's Ct. into the High Ct. can be made to a master of the K. B. Div.—*DIRECT PHOTO ENGRAVING Co. v. MARTIN*, [1921] 2 K. B. 187; 90 L. J. K. B. 727; 125 L. T. 284, D. C.

2434. Chancery.]—*WOODCRAFT v. KINASTON*, No. 2431, *ante*.

2435. — Not on order made by judge at common law.]—A *certiorari* issued out of the Ct. of Ch., on an order made by a judge at common law, is irregular.—*WORTHINGTON v. REMNANT* (1840), 10 Sim. 558; 9 L. J. Ch. 197; 59 E. R. 732.

2436. Whether Vice-Chancellor.]—*EDWARDS v. BOWEN*, No. 2840, *post*.

2437. Not Attorney-General—Application must be made to court.]—*R. v. THOMAS*, No. 2473, *post*.

SECT. 4.—TO WHAT COURTS WRIT MAY ISSUE.

2438. General rule—Inferior courts.]—If inferior cts. have not jurisdiction of the cause the K. B. may grant a *certiorari*, though the cause cannot be determined there.—*Re GASSOCK*, No. 2432, *ante*.

England.—*COLONIAL BANK OF AUSTRALIA v. WILLAN* (1874), L. R. 5 P. C. 417.—*AUS.*

e. Whether single judge of supreme court.]—*Ex p. McNEIL* (1857), 8 N. B. R. 493.—*CAN.*

f. —.—*Re RICE* (1887), 20 N. S. R. 294; 8 C. L. T. 448.—*CAN.*

g. —.—*R. v. SMITH* (1889), 1 Terr. L. R. 189.—*CAN.*

h. —.—*Re DUPAS* (1899), 20 C. L. T. Occ. N. 23; 12 Man. L. R. 653.—*CAN.*

k. —.—*Re HUNTER* (1907), 16 Man. L. R. 489.—*CAN.*

l. Whether a commissioner of

2439. — — — — — *—.*—*Certiorari* lies to all inferior jurisdictions.—*SMITH v. CROSS*, No. 3177, *post*.

2440. — — — — — *Of record.]*—(1) Where a ct. is in its nature a ct. of record a *certiorari* will lie to it by reason of the great superiority of this ct., which may command them to send their proceedings before them up hither, that it may be seen whether they confine themselves to their jurisdiction, which if they exceed, this ct. may correct them (*HOLT, C.J.*).

(2) Wherever a jurisdiction is set up by Act of Parliament to make convictions, etc. a *certiorari* will lie to remove them, as in the case of forcible entries; & the ct. is to examine, as far as it appears on record, that they have not exceeded their authority, & if they have not, or not pursued the Act, to quash the proceeding (*HOLT, C.J.*).—*GRENVILLE v. COLLEGE OF PHYSICIANS* (1700), 12 Mod. Rep. 386; 88 E. R. 1398; *sub nom.* *GROENVEIT v. BURNELL*, Carth. 491; *Holt*, K. B. 184, 536; 1 Ld. Raym. 454; 1 Com. 76; 1 Salk. 144.

Annotations:—As to (1) *Refd. Tingle v. Roston* (1825), 3 L. J. O. S. C. P. 100; *R. v. Nicholson*, etc. *Bolton JJ.*, *R. v. Greenhalgh*, etc. *Bolton JJ.*, *Ex p. Bamber* (1899), 81 L. T. 257. *Generally, Mendt. R. v. Green* (1714), Gilb. 231; *R. v. Dublin* (Dean & Chapter) (1722), 1 Stra. 536; *R. v. Scarborough Bailiffs* (1728), 1 Barn. K. B. 113; *R. v. Preston*, Cheshire (1736), 2 Stra. 1040; *Evans v. Harrison* (1762), Wilms. 130; *Crowther v. Ramabottom* (1798), 7 Term Rep. 654; *R. v. Despard* (1798), 7 Term Rep. 736; *Brittain v. Kinnaird* (1819), 1 Brod & Bing. 432; *R. v. Rogers* (1822), 1 Dow. & Ry. K. B. 166; *Scott v. Bye* (1824), 2 Bing. 344; *Basten v. Carew* (1825), 3 B. & C. 649; *Garnett v. Ferrand* (1827), 6 B. & C. 611; *Lucas v. Nockells* (1833), 10 Bing. 157; *Bristol Grdns. v. Wait* (1834), 1 Ad. & El. 264; *Daniell v. Phillips* (1835), 1 Cr. M. & R. 662; *Ridgway v. Hungerford Market Co.* (1835), 4 Nov. & M. K. B. 797; *Baillie v. Kell* (1838), 4 Bing. N. C. 638; *R. v. Thomas* (1838), 8 Ad. & El. 183; *Ex p. Bartlett* (1843), 7 Jur. 649; *Lindsay v. Leigh* (1848), 12 Jur. 286; *R. v. Hallett* (1851), 5 Cox, C. C. 238; *Ex p. Napton Overseers* (1856), 20 J. P. 541; *Hooper v. Lane* (1857), 6 H. L. Cas. 443; *Phillips v. Whitford* (1860), 2 K. & E. 804; *Ex p. Fernandez* (1861), 9 W. R. 832; *Kemp v. Neville* (1861), 10 C. B. N. S. 523; *R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 404; *Wildes v. Russell* (1866), L. R. 1 C. P. 722; *Grimwood v. Moss* (1872), L. R. 7 C. P. 360; *Serjeant v. Nash* (1903), 89 L. T. 112.

2441. — — — — — *—.*—This ct., in its discretion, will not allow the pltf. to remove a replevin cause by *certiorari*, *per saltum*, from the sheriff's ct. into this ct., for *certiorari* lies of course only to inferior cts. of record, & the sheriff's ct. is not a ct. of record for the purposes of a plaint in replevin.—*EDWARDS v. BOWEN* (1826), 5 B. & C. 206; 7 Dow. & Ry. K. B. 709; 108 E. R. 77; *subsequent proceedings*, 2 Russ. 153, L. C.

Annotations:—*Refd. Ex p. Phillips* (1835), 2 Ad. & El. 586; *Cox v. Leech* (1857), 1 C. B. N. S. 617.

2442. — — — — — *—.*—A *certiorari* does not go, as of course, to a ct. not of record (*LITTLEDALE, J.*).—*Ex p. PHILLIPS* (1835), 2 Ad. & El. 586; 111 E. R. 226.

2443. Whether to colonial or Indian courts.]—Where the civil rights of a person in military service are affected by the judgment of a military tribunal, in which that tribunal has acted without jurisdiction, or has exceeded its jurisdiction, this ct. will interfere; *aliter* where nothing but the military status of the party is affected by the judgment.

Can this ct. quash the proceedings of a ct. held in India? No more I think than they could quash the proceedings of a ct. in France. The Ct. of Q. B. in England controls local tribunals within

supreme court.]—*CORBETT v. O'DELL* (1883), 4 R. & G. 144.—*CAN.*

m. —.—*—.*—Since the adoption of Crown Rules, 1891, *certiorari* cannot be allowed by a commissioner.—*R. v. CONRAD* (1891), 24 N. S. R. 58.—*CAN.*

n. —.—*—.*—*R. v. GRANT* (1892), 23 N. S. R. 416.—*CAN.*

England, & such of its dependencies as are integral parts of England, *e.g.* Berwick-upon-Tweed & probably the Isle of Man. But there is no authority that it will send a prohibition or a *certiorari* to the colonies or to India (BLACKBURN, J.).—*Re MANSERGH* (1861), 1 B. & S. 400; 30 L. J. Q. B. 296; 4 L. T. 469; 26 J. P. 22; 7 Jur. N. S. 825; 9 W. R. 703; 121 E. R. 764.

Annotations.—*Mentd.* Dawkins v. Rokeby (1873), L. R. 8 Q. B. 255; Fraser v. Balfour (1918), 87 L. J. K. B. 1116; Heddon v. Evans (1919), 35 T. L. R. 642.

2444. — *Supreme Court of St. Helena.*—On an application for a writ of error or a writ of *certiorari* to the Supreme Ct. of St. Helena to remove the record of a conviction, the ct. refused to order a writ of error without the fiat of the A.-G., or to issue the writ of *certiorari* in order that a writ of error might be brought, appct. being in execution on a criminal charge after judgment.—*Ex p. LEES* (1858), E. B. & S. 828; 31 L. T. O. S. 247; 5 Jur. N. S. 333; 6 W. R. 660; 120 E. R. 718; *sub nom.* R. v. LEES, 27 L. J. Q. B. 403.

Annotations.—*Refd.* *Re Mansergh* (1861), 1 B. & S. 400. *Mentd.* *Ex p. Anderson* (1861), 3 E. & E. 487; R. v. Lewes Prison, *Ex p. Doyle*, [1917] 2 K. B. 254.

2445. *Berwick-upon-Tweed justices.*—Rules to show cause why a *supersedeas* should not issue on a *certiorari* to return all indictments against the defts., justices of Berwick, discharged.—R. v. COWLE (1759), 2 Burr. 834; 2 Keny. 519; 97 E. R. 587.

Annotations.—*Mentd.* Berwick-upon-Tweed Corp'n. v. Shanks (1826), 3 Bing. 459; Tooth v. Bagwell (1826), 3 Bing. 373; *Re Crawford* (1849), 13 Q. B. 613; *Ex p. Anderson* (1861), 3 E. & E. 487; *Ex p. Browne* (1864), 10 L. T. 458.

2446. *Central Criminal Court.*—*Certiorari* to remove an indictment from the Central Criminal Ct. granted, although one of the defts. did not consent to it.—R. v. CONNOP (1836), 2 Har. & W. 81.

2447. — *Writs of habeas corpus & certiorari* were granted to bring up the deft. & the depositions upon which he was committed to take his trial in Kent for murder, with the view to his being committed to Newgate, to be tried at the Central Criminal Ct.—*Ex p. HALL* (1844), 3 L. T. O. S. 208.

2448. — *Not to quash conviction.*—The High Ct. has no jurisdiction to issue a writ of *certiorari*, directed to the Central Criminal Ct. to remove a conviction obtained in the Central Criminal Ct. for the purpose of having the same quashed.—R. v. BOALER (1892), 67 L. T. 354; 56 J. P. 792; 36 Sol. Jo. 753; 17 Cox, C. C. 569, D. C.

Annotation.—*Mentd.* R. v. Munslow (1895), 11 T. L. R. 213.

2449. — — — — — *R. v. MARSHALL* (1899), 34 L. Jo. 48, D. C.

2450. *Cinque Ports Court.*—A writ of *certiorari* lies from K. B. to remove an indictment of felony from one of the Cinque Ports, & must be directed to the mayor & jurats, & not to the Lord Warden.—TYNDAL'S CASE (1632), Cro. Car. 252, 264, 291; 79 E. R. 820, 831, 855.

Annotation.—*Mentd.* Cross v. Smith (1702), 2 Ld. Raym. 836.

2451. *Commissioners of Sewers.*—A writ of *certiorari* lies to Comrs. of Sewers to remove an order made by them for the removal of their clerk, & if the return is quashed, a second *certiorari* shall issue.—ARTHUR v. YORKSHIRE SEWERS COMRS. (1724), 8 Mod. Rep. 331; 88 E. R. 237; *sub nom.* YORKSHIRE SEWERS COMRS. CASE, 1 Stra. 609; *sub nom.* R. v. BANKS & ARTHUR, Fortes. Rep. 374. *Annotation*.—*Refd.* R. v. Surrey JJ. (1870), L. R. 5 Q. B. 466.

County courts.—*See* COUNTY COURTS, Vol. XIII., pp. 543-546.

2452. *Court leet.*—A *certiorari* lies to remove a J.—VOL. XVI.

presentment in a ct. leet.—R. v. ROUPELL (1776), 2 Cowp. 458; 98 E. R. 1185.

2453. *Court-martial—Where civil rights invaded.*—*Re MANSERGH*, No. 2443, *ante*.

2454. *Forest courts.*—Proceedings in the forest cts. may be removed into K. B.—R. v. MYNN (1635), Cro. Car. 410; 79 E. R. 956.

2455. *Grand Sessions of Wales.*—*CAREW'S CASE* (1618), Cro. Jac. 484; *CHEDLEY'S CASE* (1633), Cro. Car. 331; R. v. MORRIS (1670), 1 Mod. Rep. 68; R. v. JAMES (1698), 12 Mod. Rep. 197; R. v. ATHOS (1723), 8 Mod. Rep. 135; ANON. (1735), Lee temp. Hard. 165; R. v. LEWIN (1726), 2 Stra. 704; R. v. GRIFFITH (1790), 3 Term Rep. 658.

2456. *Inclosure Commissioners.*—An award made by an assistant Inclosure Comr., that a certain common was within the manor of L., was removed, into the Ct. of Q. B. by *certiorari*, on the application of the lord of the manor of E., who claimed the common to be parcel of his manor.—R. v. KELCEY (1850), 1 L. M. & P. 499; 19 L. J. Q. B. 523; 15 Jur. 629.

2457. *Isle of Ely Court.*—SMITH v. CROSS, No. 3177, *post*.

2458. *Justices.*—(1) A *certiorari* lies to justices of the peace in Wales, & Counties Palatine.

(2) Motion for a *certiorari* to remove an order made by justices of the peace concerning the repair of a bridge & weir pursuant to a private Act:—*Held*: the justices ought to return the private Act upon which their order was founded.

(3) A *certiorari* lies to remove the proceedings of any jurisdiction newly created by Act of Parliament.—CARDIFFE BRIDGE CASE (1700), 1 Salk. 146; 91 E. R. 135; *sub nom.* R. v. GLAMORGANSHIRE (INHABITANTS), 12 Mod. Rep. 403; 1 Ld. Raym. 580; *sub nom.* R. v. —, 1 Com. 86.

Annotations.—*As to* (2) & (3) *Refd.* Colonial Bank of Australasia v. Willan (1874), L. R. 5 P. C. 117. *Generally, Mentd.* Chapman v. Mattison (1738), Andr. 191.

See MAGISTRATES.

Licensing justices.—*See* Nos. 2493, 2729-2735, 3337, *post*.

Mayor's Court.—*See* MAYOR'S COURT, LONDON. **Old Bailey sessions—On special cause shown.**—*See* Sect. 6, sub-sect. 1, B. (c), i., *post*.

2459. *Palatine Court.*—CARDIFFE BRIDGE CASE, No. 2458, *ante*.

2460. — *Special cause must be shown.*—A *certiorari* cannot be sued out as of course, and without laying a special ground before the ct., to remove proceedings from the Cts. of the Counties Palatine.—ZINK v. LANGTON (1781), 2 Doug. K. B. 749; 99 E. R. 478.

Annotations.—*Refd.* Jones v. Davis (1822), 1 L. J. O. S. K. B. 54; Landens v. Sheil (1834), 3 Dowl. 90. *Mentd.* Entwistle v. Shepherd (1787), 2 Term Rep. 78.

2461. — *Chester.*—PORTINGTON v. TARBOCK (1683), 1 Vern. 177; 23 E. R. 398; *subsequent proceedings, sub nom.* PARTINGTON v. TARBOCK, 1 Vern. 184.

2462. — — — *Special verdict found.*—The ct. will not grant a *certiorari* to remove proceedings in *quare impedit* from the Ct. of Great Session at Chester into this ct., where a special verdict is expected to be found; the proper course is to remove the special verdict, when found, into this ct. by writ of error.—PICKERING v. CHESTER (BP.) (1825), 6 Dow. & Ry. K. B. 489.

2463. — *Durham.*—*Certiorari* granted to remove a suit from the Ct. of Ch. of Durham into the Ct. of Ch.—HILTON v. LAWSON (1559), Cary, 48; 21 E. R. 26.

2464. — — — *Removal of indictment for murder.*—A writ of *certiorari* lies to the County Palatine of Durham to remove an indictment for

Sect. 4.—To what courts writ may issue. Sect. 5: Sub-sect. 1, A. & B.; sub-sect. 2, A.]

murder into the K. B.—ANON. (1641), March, 165, pl. 232; 82 E. R. 459.

2465. Quarter sessions.]—R. v. ANON. (1846), 10 J. P. Jo. 788.

2466. Sheriff's court.]—EDWARDS v. BOWEN, No. 2441, ante.

For statutory restrictions on issue of writ, see Sect. 7, post.

SECT. 5.—WHETHER AS OF RIGHT OR DISCRETIONARY.

SUB-SECT. 1.—THE CROWN OR CRIMINAL PROCEEDINGS.

A. On Application by the Crown.

2467. Granted as of course—As distinguished from applications by subject.]—The King is entitled to a *certiorari* as a matter of right; but if the appeal be made by a subject, it is matter of discretion.—LAMPRIERE'S CASE (1670), 1 Mod. Rep. 41; 1 Vent. 63; 86 E. R. 717.

Annotation: *Reid*. Cross v. Smith (1702), 1 Salk. 148.

2468. ———.]—A *certiorari* lies to remove a conviction on 16 Geo. 3, c. 30, if deft. has not appealed to quarter sessions.

A *certiorari* is granted of course on the application of the Crown, but not so where deft. applies, for he must lay some ground for it before the ct., supported by affidavit.—R. v. EATON (1787), 2 Term Rep. 89; 100 E. R. 49; subsequent proceedings, 2 Term Rep. 285.

2469. ———.]—Deft. to obtain a writ of *certiorari* must show a special reason. It is otherwise if the Crown or prosecutor apply for it.

The want of jurisdiction is a sufficient reason for granting it.—GARLAND v. BARTON (1737), Andr. 27; 95 E. R. 282; subsequent proceedings (1738), Andr. 1741.

2470. ———.]—Whether Crown prosecutor or defendant.]—On a motion for *certiorari* to remove an indictment for shutting & locking one of the gates of R. park in violation of His Majesty's private rights:—*Held*: as a general rule, wherever the King's right appears to be concerned he may without a special order have it tried where he pleases & as *certiorari* is always granted wherever the Crown's interest is concerned either as prosecutor or deft., so in the present case the remedy by way of *certiorari* lay.—R. v. BURGESS (1754), Dunning, 22; 1 Keny. 135; Say. 128; 96 E. R. 942.

Annotation:—*Reid*. R. v. Amendt (1915), 84 L. J. K. B. 1259.

2471. ———.]—Unless right restrained by statute.]—The King has a right in every case where the Crown is concerned, to demand a *certiorari*, & the ct. are bound to grant it, unless the King's right to it is restrained by some Act of Parliament (LORD MANSFIELD, C.J.).—R. v. CLACE (1769), 4 Burr. 2456; 98 E. R. 288.

Annotations:—*Reid*. R. v. Eaton (1787), 2 Term Rep. 89; R. v. Amendt, [1915] 2 K. B. 276.

2472. ———.]—A *certiorari* to remove an indictment of an excise officer from the sessions was granted on the motion of the A.-G. without any affidavit.—R. v. STANNARD (1791), 4 Term Rep. 161; 100 E. R. 950.

2473. ———.]—A *certiorari* was granted at the

instance of the A.-G. on behalf of a prisoner to remove an indictment for murder.

The A.-G. has not the power of himself to issue a *certiorari*, but must make application to this ct., but upon such his application being indorsed, it is a matter of course with the ct. to grant the *certiorari* (LORD ELLENBOROUGH, C.J.).—R. v. THOMAS (1815), 4 M. & S. 442; 105 E. R. 897.

2474. ———.]—On the application of the A.-G., the Ct. of K. B. will, as of course grant a *certiorari* to remove into this ct. the record of the conviction & judgment of prisoners convicted & sentenced to death at the assizes.—R. v. GARSIDE & MOSLEY (1834), 2 Ad. & El. 266; 4 Nev. & M. K. B. 33; 4 L. J. M. C. 3; 111 E. R. 103.

Annotations:—*Mentd.* R. v. Antrobus (1835), 6 C. & P. 784; R. v. Rushworth (1844), 1 New Sess. Cas. 415.

2475. ———.]—CHURTON v. WILKIN, [1884] W. N. 62; Bitt. Rep. in Ch. 134.

2476. ———.]—Removal of criminal case into King's Bench.]—Where an application is made at the instance of the A.-G. to remove a criminal case by writ of *certiorari* into the Q. B. Div. the rule will be made absolute as a matter of right in the first instance.—*Re AN APPLICATION FOR A CERTIORARI BY A.-G.* (1885), 2 T. L. R. 174.

2477. ———.]—(1) A writ of *certiorari* may be issued for removing an indictment not yet found & is granted as of course on the motion of the A.-G. on behalf of the Crown.

(2) An order absolute for a trial at bar is granted as of course on the motion of the A.-G. on behalf of the Crown, even although before issue joined.—R. v. JAMESON, [1896] 2 Q. B. 425; 65 L. J. M. C. 218; 75 L. T. 77; 60 J. P. 662; 12 T. L. R. 5.

18 Cox, C. C. 392.
Annotations:—*Mentd.* R. v. Audley, [1907] 1 K. B. 383; R. v. Stride & Millard, [1908] 1 K. B. 617; R. v. Porter (1909), 3 Cr. App. Rep. 237; R. v. Crewe, *Ex p.* Sekgone, [1910] 2 K. B. 576; Coldingham Parish Council v. Smith, [1918] 2 K. B. 90.

2478. ———.]—Although statutory provisions not complied with—As to time for application.]—(1) Orders of justices of peace, made in pursuance of the excise laws, may be removed by *certiorari*.

(2) The words "party, person," etc. in 13 Geo. 2, c. 18, do not include the Crown, therefore a *certiorari*, on the motion of the A.-G., was directed to issue, although the time limited by that statute for applications for such writs had elapsed, & the directions in it, relative to notice to the justices, had not been complied with by the Crown.

(3) It is the undoubted prerogative of the Crown to see that all inferior jurisdictions are kept within their proper bounds, & on that principle the whole doctrine of *certiorari* proceeds (FOSTER, J.).—R. v. BERKLEY & BRAGGE (1754), 1 Keny. 80; Say. 123; Dunning, 13; 96 E. R. 923.

2479. ———.]—The ct. granted the A.-G. a *certiorari* to remove a record of conviction after six months, although Quarter Sessions Appeal Act, 1731 (c. 19), expressly directs that the *certiorari* shall be applied for within that time.—R. v. JAMES (1786), 1 East, 304, n.; Cald. Mag. Cas. 458; 102 E. R. 118, n.

Annotations:—*Reid*. R. v. Amendt (1915), 84 L. J. K. B. 1259. *Mentd.* R. v. Rowlands (1851), 21 L. J. M. C. 81.

2480. ———.]—Although *certiorari* taken away by statute.]—The general words of Disorderly Houses Act, 1751 (c. 36), s. 10, that no indictment for keeping a disorderly house shall be removed by *certiorari*, do not restrain the Crown from removing

PART IX. SECT. 5, SUB-SECT. 1.—A.

2481. Granted as of course—As distinguished from application by subject.]—*Certiorari* may be claimed by

the Crown as a matter of right; but except where applied for by the Crown, *certiorari* is not a writ of course, & the ct. must be satisfied that there is sufficient ground for it.—*Re RUGGLES*

(1902), 35 N. S. R. 57.—CAN.

2482. ———.]—R. v. NELSON (1908), 12 O. W. R. 1063; 18 O. L. R. 484; 15 Can. Crim. Cas. 10.—CAN.

the indictment by *certiorari*, there being nothing in the Act to show that the legislature intended that the Crown should be bound by it.—*R. v. DAVIES* (1794), 5 Term Rep. 626; 101 E. R. 350.

2481. ———.]—CUMBERLAND COUNTY (INHABITANTS) *v. R.* No. 3038, *post*.
Statutory restrictions.]—*See Sect. 7, post*.

B. On Application by the Subject.

2482. Grant in discretion of court.]—*LAMPRIERE'S CASE*, No. 2467, *ante*.

2483. ———.]—*GARLAND v. BARTON*, No. 2469, *ante*.

2484. ———.]—*R. v. JENKINSON*, No. 3468, *post*.

2485. ———.]—*R. v. EATON*, No. 2468, *ante*.

2486. ———.]—It is discretionary in the ct. to grant or refuse a *certiorari* to remove a conviction before justices of the peace; & if the ct. see that the justices have drawn the proper conclusion from presumptive evidence they will not grant a *certiorari*.—*R. v. BASS* (1793), 5 Term Rep. 251; *Nolan*, 227; 101 E. R. 141.

2487. ———.]—*R. v. BOALER* (1888), *Times*, Jan. 25.

2488. Granted *ex debito justitiæ*—Application by party aggrieved.]—A baker was charged under Bread Act, 1836 (c. 37), with selling bread otherwise than by weight & was convicted in presence of two justices. He obtained a rule *nisi* for a writ of *certiorari* to quash the conviction on the ground that one of the justices alleged to have taken part in the conviction was a person concerned in the business of a baker. The affidavit on which the rule *nisi* was obtained did not state that any objection to the competence of the ct. was taken at the hearing before the justices, nor did it state that at the date of that hearing appct. was without knowledge of the facts alleged to disqualify one of the justices:—*Held*: this defect in the affidavit disentitled appct. to the issue of a writ of *certiorari ex debito justitiæ*.

When objection to a conviction is taken merely by a member of the public & not by a party more particularly aggrieved the granting of a *certiorari* is discretionary; where the objection is by a party aggrieved, then, as a rule, the writ issues *ex debito justitiæ*; but a party aggrieved may by his conduct preclude himself from taking objection to the jurisdiction of an inferior ct. (*CHANNELL, J.*).—*R. v. WILLIAMS, Ex p. PHILLIPS*, [1914] 1 K. B. 608; 83 L. J. K. B. 528; 110 L. T. 372; 78 J. P. 148, D. C.

Annotation:—*Reid. R. v. West Suffolk Compensation Authority, Ex p. Hudson's Cambridge & Pampford Breweries*, [1919] 2 K. B. 374.

— In civil proceedings.]—*See Nos. 2493, 2494, 2822, post*.

SUB-SECT. 2.—CIVIL PROCEEDINGS.

A. At Common Law.

2489. Writ issues as of right.]—Generally speaking, the writ of *certiorari* is the right of the

subject at common law, & although that right is taken away in many cases by various Acts of Parliament, & particularly so in large classes of cases where otherwise it might cause injury, we think that the analogy of the common law ought to be applied to the present case, & as in other cases, where deft. applies for a *certiorari*, the application is made *ex p.* we think the authority of the judge to issue, & what is perhaps of more importance, the right of the subject to have, this writ, ought not to be taken away by any argument arising out of the use by the legislature of the words or upon such terms as to the judge shall seem fit [in *County Cts. Act*, 1846 (c. 95), s. 90], & indeed, ought not to be taken away without either express words, or words clearly to that effect (*POLLOCK, C.B.*).—*SYMONDS v. DIMSDALE* (1848), 2 Exch. 533; 6 Dow. & L. 17; 17 L. J. Ex. 247; 11 L. T. O. S. 225; 12 Jur. 485; 154 E. R. 603; *sub nom. SIMMONDS v. DIMSDALE*, 12 J. P. Jo. 442.

Annotations:—*Conad. Cherry v. Endean* (1886), 55 L. J. Q. B. 292. *Reid. Re Hammersmith Rentscharge* (1849), 4 Exch. 87; *Ex p. G. W. Ry.* (1857), 2 H. & N. 557. *Mentd. Dowling v. G. W. Ry., Williams v. G. W. Ry.* (1857), 30 L. T. O. S. 155.

2490. ———.]—Any action brought in the Mayor's Ct. to recover more than £50 may, as a matter of right, be removed by writ of *certiorari* into the Q. B. Div.—*LILLEY v. DORIN* (1885), 1 T. L. R. 455, D. C.

Annotation: *Expld. & Distd. Cherry v. Endean* (1886), 55 L. J. Q. B. 292.

2491. ———.]—At common law a writ of *certiorari* issues as of right to remove an action from an inferior ct. to the High Ct. *Liverpool Borough Ct. (Removal of Actions) Act*, 1842 (c. lii.), s. 2, & *Liverpool Ct. of Passage Act*, 1893 (c. 37), s. 5, do not take away this right, but the former Act merely imposes on its exercise the condition that recognisances shall be given unless the judge dispenses with them. The application for the writ is in time, within sect. 3 of the former Act, if it be made within one month of the delivery of the statement of claim.

I think it is clear that there was a common law right to remove these actions from inferior cts., & no doubt the limitations which have been settled one at a time have led to some of the amending statutes. They proceeded by steps. I have looked at two or three of them, & there does not seem to have been any discretion given, in those I have seen, for the ct. to deal with the cases below the limits which were put. They also impose restrictions as to the application being made before the first step of the trial, & before the plea. I think that all those progressive interferences or limitations point to the existence of a right which was being cut down (*LORD ALVERSTONE, C.J.*).—*EDWARDS v. LIVERPOOL CORPN.* (1902), 86 L. T. 627; 18 T. L. R. 529; 46 Sol. Jo. 451, D. C.

2492. — Application by party aggrieved—Unless precluded from applying by conduct.]—*R. v. SURREY JJ.*, No. 2822, *post*.

2493. ———.]—On an application by

PART IX. SECT. 5, SUB-SECT. 1.—B.

2482 i. Grant in discretion of court.]—Deft. was convicted for forcible entry but the ct. refused restitution:—*Held*: *certiorari* was discretionary & in the circumstances was refused.—*R. v. WIGHTMAN* (1869), 29 U. C. R. 211.—*CAN.*

2482 ii. ———.]—Where deft. has been committed for trial, but afterwards admitted to bail & discharged from custody, a superior ct. has still power to remove the proceedings on *certiorari*, but in its discretion it will not do so where there is no reason to apprehend

an unfair trial.—*R. v. ADAMS* (1881), 8 P. R. 462.—*CAN.*

2482 iii. ———.]—The granting of a *certiorari* is a matter for the discretion of the ct.; & when a statute makes provision for an appeal from a summary conviction under it, that discretion should be exercised by refusing the writ, unless special circumstances are shown.—*R. v. HERRELL* (1899), 12 Man. L. R. 522.—*CAN.*

2482 iv. ———.]—Writs of *certiorari* are granted, not as a matter of right, but in the exercise of a sound judicial discretion.—*Re MAYO (COUNTY) PRE-*

SENTMENTS OF GRAND JURY (1861), 7 Ir. Jur. 96; 14 I. C. L. R. 392.—*IR.*

PART IX. SECT. 5, SUB-SECT. 2.—A.

2492 i. Writ issues as of right—Application by party aggrieved—Unless precluded by conduct.]—The general course is to award the writ as of common right, unless appct. has by his conduct forfeited that right or rendered it inexpedient that the ct. should interfere.—*LISTOWEL (LORD) v. IRISH FISHERIES (INSPECTOR)* (1875), 1 R. 9 C. L. 46.—*IR.*

Sect. 5.—Whether as of right or discretionary: Sub-sect. 2, A. & B. Sect. 6: Sub-sect. 1, A. & B. (a.)]

the owners of licensed premises for a writ of *certiorari* to quash an order of the compensation authority refusing the renewal of the licence on the ground that that order had been made without jurisdiction:—*Held*: there had been no conduct on the part of appets. disentitling them as persons aggrieved to the issue of the writ *ex debito justitiæ*.—*R. v. WEST SUFFOLK COUNTY COMPENSATION AUTHORITY, Ex p. HUDSON'S CAMBRIDGE & PAMPISFORD BREWERIES, LTD.*, [1919] 2 K. B. 374; 88 L. J. K. B. 1022; 121 L. T. 88; 83 J. P. 161; 35 T. L. R. 437; 63 Sol. Jo. 574, D. C.

2494. ————.]—On an application by the owner of a farm for a writ of *certiorari* to remove an order into the High Ct. on the ground that the county council had made it without jurisdiction, inasmuch as they had not obtained the previous consent of the Board of Agriculture:—*Held*: the order was not merely administrative but quasi-judicial in character, it affected appct. personally & not only as one of the public or of a section thereof, & he had not in fact waived any right which he would otherwise have had to the relief which he claimed, & if he made good the ground of his application, he was entitled to the writ *ex debito justitiæ*.—*R. v. BEDFORDSHIRE COUNTY COUNCIL, Ex p. SEAR*, [1920] 2 K. B. 465; 89 L. J. K. B. 425; 123 L. T. 50; 36 T. L. R. 369; 84 J. P. 97; 18 L. G. R. 249, D. C.

— **Criminal proceedings.**]—See No. 2488, *ante*.

2495. Not as of course—Grant in discretion of court.]—The granting a *certiorari* is matter of discretion, though there are fatal defects on the face of the proceedings which it is sought to bring up. Where a *certiorari* is sought to bring up an inquisition that it may be quashed for some error, a copy of it must be shown to the ct., when the rule is applied for, or appct. must swear positively to some defect contained in it. An affidavit that A. objects that there is a certain defect in an inquisition is insufficient.—*R. v. MANCHESTER & LEEDS RY. CO.* (1838), 8 Ad. & El. 413; 3 Nev. & P. K. B. 439; 1 Will. Woll. & H. 458; 7 L. J. Q. B. 192; 2 Jur. 857; 112 E. R. 895.

Annotations:—*Refd.* Taylor v. Clemson (1844), 11 Cl. & Fin. 610; Cordon v. Universal Gaslight Co. (1848), 5 Ry. & Can. Cas. 677. *Mntd.* R. v. Pickles (1842), 12 L. J. Q. B. 40; R. v. G. W. Hy. (1844), 5 Q. B. 597; Tilt v. Dickson (1847), 4 C. B. 736; Dodgson v. Scott (1848), 2 Exch. 457.

2496. ————.]—*R. v. SURREY JJ.*, No. 2822, *post*.

2497. ————.]—*CHERRY v. ENDEAN*, No. 3007, *post*.

2498. ————.]—*R. v. GROVE, ETC., WILTSHIRE JJ.*, No. 3337, *post*.

— **On application by party aggrieved—Right**

2495 i. Not as of course—Grant in discretion of court.]—Where the refusal of the writ would result in grave injustice, the discretion of the ct. should be exercised in its favour.—*Re MARITIME FISH CORPN., LTD.* (1919), 53 N. S. R. 15.—**CAN.**

o. ————.]—*On application by party aggrieved—Right precluded by conduct.*]—Where an appct. elects his mode of appeal, obtaining an adverse decision, the ct. will not grant *certiorari*.—*Ex p. WILSON* (1877), 1 P. & B. 274.—**CAN.**

p. ————.]—*Where no benefit can be derived.*]—Deft. was ejected under an order of justices which was bad, she subsequently applied for a *certiorari*:—*Held*: the granting of a

writ of *certiorari* at the instance of a private person is a matter of discretion, & not *ex debito justitiæ*; & as the order had been executed & the writ of *certiorari* would not restore her to possession, no benefit would be gained by applicant from the writ, as her rights were not prejudiced by the order, seeing that it was null & void.—*R. v. LONDONDERRY JJ.*, [1905] 2 I. R. 318.—**IR.**

PART IX. SECT. 6, SUB-SECT. 1.—A.

q. *At common law—Not an interpleader issue.*]—*JONES v. HARRIS* (1860), 6 U. C. L. J. O. S. 16.—**CAN.**

r. ————.]—*RUSSELL v. WILLIAMS* (1862), 8 U. C. L. J. O. S. 277.—**CAN.**

precluded by conduct.]—See Nos. 2493, 2494, *ante*, No. 2882, *post*.

B. Effect of Statute.

See Sect. 7, sub-sect. 1, *post*.

SECT. 6.—PURPOSES OF THE WRIT.

SUB-SECT. 1.—TO REMOVE FOR TRIAL.

A. Civil Actions.

2499. At common law—Ejectment.]—*Certiorari* lies to remove an ejectment cause from an inferior jurisdiction into this ct.—*DOE d. SADLER v. DRING* (1823), 1 B. & C. 253; 1 L. J. O. S. K. B. 109; 107 E. R. 94; *sub nom.* *GOODRIGHT d. SADLER v. DRING*, 2 Dow. & Ry. K. B. 407.

2500. ————.]—An ejectment brought in an inferior ct. on a lease may be removed into this ct. by *certiorari*, if there be any ground for believing that it cannot be impartially tried in the inferior ct.—*PATTERSON d. GRADRIDGE v. EADES* (1824), 3 B. & C. 550; 5 Dow. & Ry. K. B. 445; 107 E. R. 838.

— **Whether writ issues as of right.**]—See Nos. 2488–2494, *ante*.

2501. Grounds for removal—At common law—To secure impartial trial.]—The ct. of K. B. will not quash a writ of *certiorari* because the damages laid in the record below, which was an action for an assault against excise officers, were under 40s.

This was an action for an assault, brought against excise officers, who could not have an impartial trial there [in the ct. below] (*per cur.*).—*DANIEL v. PHILLIPS* (1792), 4 Term Rep. 499; 100 E. R. 1141.

2502. ————.]—*PATTERSON d. GRADRIDGE v. EADES*, No. 2500, *ante*.

2503. ————.]—A rule was obtained for a *certiorari* to remove this cause from the Stannary Ct. of Cornwall to Q. B., on the ground that an impartial trial could not be had, & that barristers did not attend the ct., & difficult points of law would arise:—*Held*: the rule would be made absolute.

On an application to fix the venue:—*Held*: this would have to be the subject of a separate motion.—*THOMAS v. VICE* (1843), 1 L. T. O. S. 312.

2504. ————.]—**Inferior court acting without jurisdiction.**]—*TINGLE v. ROSTON* (1825), 2 Bing. 463; 10 Moore, C. P. 171; 3 L. J. O. S. C. P. 100; 130 E. R. 385.

2505. ————.]—**Difficult points of law.**]—*THOMAS v. VICE*, No. 2503, *ante*.

2506. ————.]—**Not if less expensive remedy available.**]—When a judge at chambers has declined to grant a *certiorari* the ct. will not do so merely because it appears that possibly a

s. ————.]—**Proceedings under Confined Debtors Act.**]—A *certiorari* lies to remove the proceedings before justices under the Act.—*WHITE v. COLEMAN* (1860), 9 N. B. R. 630.—**CAN.**

2505 i. Grounds for removal—At common law—Difficult points of law.]—*CATARAQUI CEMETERY CO. v. BURROWS* (1857), 3 U. C. L. J. O. S. 47.—**CAN.**

2505 ii. ————.]—*NUGENT v. CHAMBERS* (1857), 3 U. C. L. J. O. S. 108.—**CAN.**

t. ————.]—**Questions of law—As to Statute of Limitations.**]—*RIDLEY v. TULLOCK* (1857), 3 U. C. L. J. O. S. 14.—**CAN.**

a. — Obstructing a public highway.—*R. v. MAGILL* (1859), 8 I. C. L. R. Ap. lxi; 4 Ir. Jur. 182.—**IR.**

(a) *At Common Law.*

Annotations:—*Reid. R. v. Tryddyn* (1852), *Ball. Ct. Cas.* 19; *R. v. Puok* (1912), 28 *T. L. R.* 197. *Mentd. R. v. G. N. of England Ry.* (1846), 9 *Q. B.* 315; *R. v. Stainhill* (1858), 1 *P. & F.* 363; *London Joint Stock Bank v. London Corpn*

Sect. 6—Purposes of the writ: Sub-sect. 1, B. (a), (b) & (c) i. & ii.]

(1875), 1 C. P. D. 1; *Pharmaceutical Soc. v. London Supply Assn.* (1879), 4 Q. B. D. 313; *R. v. Tyler & International Commercial Co.*, [1891] 2 Q. B. 588.

2522. ———.]—An indictment against a corporate body for non-repair of a highway was removed by prosecutor into the Q. B. by *certiorari*, on the ground that the indictment could not be tried at sessions, as the defts., a corporate body, could not appear personally or by attorney & plead.—*R. v. MANCHESTER CORPN.* (1857), 7 E. & B. 453; 26 L. J. M. C. 65; 28 L. T. O. S. 369; 21 J. P. 165; 3 Jur. N. S. 839; 5 W. R. 373; 119 E. R. 1315.

Annotations.—*Reid. R. v. Puck* (1912), 28 T. L. R. 197. *Mentd. Marriage v. Eastern Counties Ry. & London & Blackwall Ry.* (1857), 2 H. & N. 625; *Southern Counties Deposit Bank v. Boaler* (1895), 59 J. P. 536.

2523. ———.]—*R. v. NORFOLK COUNTY COUNCIL* (1909), 73 J. P. Jo. 528, D. C.

2524. ———.]—The ct., without deciding that a limited co. could not plead to an indictment at the Central Criminal Ct., made absolute a rule for the removal from that Ct. to the High Ct. of the indictment against the co.—*R. v. PUCK & Co., LTD.* (1912), 28 T. L. R. 197, D. C.

Coroner's Inquisitions.]—See CORONERS, Vol. XIII., pp. 243, 253, 259, Nos. 151, 313, 400.

Presentments before Commissioners of Sewers.]—See SEWERS & DRAINS.

Procedure, see Sect. 9, sub-sect. 2, *post*.

(b) Under Statute.

2525. Removal to Central Criminal Court—Central Criminal Court Act, 1834 (c. 36)—From sessions.]—The Ct. of Q. B. has the power to issue a special writ or order in the nature of a *certiorari*, under the above Act, for the removal of indictments for obtaining money under false pretences, from the sessions mentioned in that Act, to the Central Criminal Ct., notwithstanding 7 & 8 Geo. 4, c. 20, s. 53 taking away *certiorari* in the case of indictments for obtaining money under false pretences.—*R. v. SILL* (1852), *Dears. C. C.* 10; 21 L. J. M. C. 214; 16 J. P. 407; 17 Jur. 22; *sub nom. R. v. LILLS*, 19 L. T. O. S. 201.

Annotation.—*Mentd. R. v. Brixton Prison, Ex p. Stallmann*, [1912] 3 K. B. 424.

2526. ———.]—*Ex p. WALL* (1890), 6 T. L. R. 374, D. C.

2527. ———.]—**Further removal to High Court.]—**Central Criminal Ct. Act, 1834 (c. 36), does not affect the removal of indictments from that ct. Such removal is regulated by 5 & 6 Will. 4, c. 33, & deft. moving such indictment under the latter statute becomes liable in case of conviction to pay to prosecutor the costs occasioned by such removal.—*R. v. HAWDON* (1841), 9 Dowl. 1007.

Annotations.—*Mentd. R. v. Sydeeff* (1844), 2 Dow. & L. 564; *Jones v. Orchard* (1855), 16 C. B. 614.

2528. ———.]—When an indictment at sessions, under Disorderly Houses Act, 1751 (c. 30), for keeping a disorderly house, has been removed by prosecutor or deft. into the Central Criminal Ct. under sect. 16 of the Act of 1834, the opposite party may remove it again into this ct. notwithstanding sect. 10 of the Act of 1751.—*R. v. BRIER* (1850), 14 Q. B. 568; 19 L. J. M. C. 121; 14 L. T. O. S. 346; 14 J. P. 447; 14 Jur. 391; 117 E. R. 219.

Annotation.—*Distd. R. v. SILL* (1852), 21 L. J. M. C. 214.

2529. ———.]—**Central Criminal Court Act, 1856 (c. 16), s. 8.]—***R. v. PALMER*, No. 2550, *post*.

2530. ———.]—**From assizes.]—***R. v. RUXTON*, No. 2577, *post*.

2531. ———.]—*R. v. PACKER* (1877), 41 J. P. Jo. 100, D. C.

2532. ———.]—*Re MOROSS*, No. 2582, *post*.

2533. ———.]—*R. v. BARNETT*, No. 2541, *post*.

(c) Grounds for Removal.

i. In General.

2534. General rule.]—In order to induce the ct. to grant a *certiorari* for removing an indictment at the instance of deft. from the sessions, it must be shown either that some difficult point of law is likely to arise, or that a local prejudice exists, & that deft. cannot have a fair trial. A general prejudice throughout the kingdom, & the fact that the indictment is one of a class to which public attention has been particularly directed, furnish no ground for the granting of the writ.—*R. v. HAYWARD* (1840), 4 J. P. 428; *sub nom. R. v. HEYWOOD*, 4 Jur. 413.

2535. ———.]—Since Criminal Procedure Act, 1853 (c. 30), it is necessary, in order to obtain a *certiorari*, to remove an indictment into the Ct. of K. B. to be shown by the party applying that a fair & impartial trial of the case cannot be had in the ct. below, or that some question of law of more than usual difficulty & importance is likely to arise upon the trial, or that a view of the premises in respect whereof any indictment is preferred, or a special jury might be required for the satisfactory trial of same.—*R. v. GATE FULFORD, YORKSHIRE (INHABITANTS)* (1855), 24 L. T. O. S. 263; 19 J. P. 71; 3 W. R. 212; 6 Cox, C. C. 510.

2536. Necessity for special cause.]—ANON. (1702), 7 Mod. Rep. 118; 87 E. R. 1135.

2537. ———.]—**Removal from Old Bailey.]—***R. v. ORME & NUTT* (1699), 1 Ld. Raym. 486; *NEHUFF'S CASE* (1705), 1 Salk. 151; *R. v. JONES* (1713), *Gilb.* 13; *R. v. GOULSTON* (1724), *Sess. Cas.* K. B. 91; *R. v. GUNSTON* (1724), 1 Stra. 583; *R. v. WRIGHT* (1731), 2 Stra. 915; *R. v. MORGAN* (1736), 2 Stra. 1049; *R. v. FERGUSON* (1737), *Lee temp. Hard.* 369.

2538. ———.]—**Removal from Central Criminal Court.]—***R. v. IVIMEY* (1887), 4 T. L. R. 71, D. C.

To what courts writ issues.]—See Sect. 4, *ante*.

2539. Want of jurisdiction in court below.]—GARLAND *v. BARTON*, No. 2469, *ante*.

2540. ———.]—(1) Where an indictment had been found at sessions for an offence, which, by Quarter Sessions Act, 1842 (c. 38), the sessions was incompetent to inquire into:—*Held: a certiorari* to remove the indictment into the Central Criminal Ct. would be granted.

(2) *Semble: a judge at chambers* has no authority to make the order, but the application must be made to the judges of the Central Criminal Ct., while sitting as such.—*R. v. PHILLIPS* (1846), 8 L. T. O. S. 4; 2 Cox, C. C. 114.

2541. Removal under Central Criminal Court Act, 1856 (c. 16).—"Expedient to ends of justice"—Disagreement of jury—Attempts to prejudice jury.]—The power of the K. B. Div. to remove the trial of an indictment from the assizes to the Central Criminal Ct. under sect. 3 of the above Act, "where it is expedient to the ends of justice," extends to a case where the jury have disagreed & where attempts have been made to excite sympathy with the accused among the jurymen on the assize panel.—*R. v. BARNETT*, [1919] 1 K. B. 640; 88 L. J. K. B. 620; 83 J. P. 134; 35 T. L. R. 344, D. C.

ii. *Inability to secure Fair Trial.*

2542. General rule.—The ct. will not grant a *certiorari* to remove an indictment of murder from Wales on the prosecutor's affidavit, that he was informed by his solr. that deft. had made presents to the gentlemen of the county, but on full & clear evidence of probable partiality the trial shall be had in the next English county.—*R. v. BURNABY* (1723), 8 Mod. Rep. 146; 88 E. R. 110.

2543. —.]—Deft. was indicted at the Grand Sessions for the County of A. for embracery & a *certiorari* to K. B. was granted for the case to be tried in the next English county on the ground that there might not be a fair trial in Wales.—*R. v. LEWIS* (1726), Sess. Cas. K. B. 90; 2 Stra. 704; 93 E. R. 91.

Annotations :—*Consd. R. v. Cowle* (1759), 2 Burr. 834. *Refd. R. v. Clace*, Glamorgan, *R. v. Lewis* (1769), 4 Burr. 2456.

2544. —.]—An indictment for a felony shall be removed from a corpn. sessions, if there is reason to apprehend deft. cannot have a fair trial there.—*R. v. FAWLE* (1726), 2 Ld. Raym. 1452; 92 E. R. 445.

2545. —.]—The ct. will remove an indictment for a misdemeanour from L. to Y., if there is any reasonable cause of suspicion or apprehension that justice will not be impartially administered in the former county.—*R. v. HUNT* (1820), 3 B. & Ald. 444; 2 Chit. 130; 1 State Tr. N. S. 171, 175; 106 E. R. 725; *subsequent proceedings*, 3 B. & Ald. 566.

Annotations :—*Refd. R. v. Newton* (1837), 2 Nev. & P. K. B. 121. *Mentd. R. v. Holden* (1833), 5 B. & Ad. 347; *A.-G. v. Churchill* (1841), 8 M. & W. 171; *R. v. Wilks* (1855), 5 E. & B. 690; *Rinns v. Moseley & Cobbett* (1857), 5 W. R. 583; *R. v. Barrett* (1870), 18 W. R. 671; *R. v. Sheldon* (1875), 32 L. T. 27.

2546. —.]—*Certiorari* refused to remove an indictment of murder from Y., in order to a trial at bar, or in another county, on the ground that the prisoners, who had pleaded to the indictment, could not have a fair & impartial trial in the former county.—*R. v. MEAD* (1823), 3 Dow. & Ry. K. B. 301; 2 Dow. & Ry. M. C. 66.

Annotation :—*Consd. R. v. Palmer* (1856), 5 E. & B. 1024.

2547. —.]—*R. v. —*, No. 2570, *post*.

2548. —.]—*Ex p. —* (1846), 10 J. P. Jo. 787.

2549. —.]—Motion for a *certiorari* to remove an indictment for assault into this ct. with a view to its being tried by a special jury. It was suggested that deft. would not be likely to have a fair trial at the sessions :—*Held* : the writ would be granted.—*R. v. KING* (1855), 25 L. T. O. S. 168; 19 J. P. Jo. 357.

2550. —.]—The Ct. of Q. B. will remove a coroner's inquisition, or an indictment to be found at the ensuing assizes, for murder, from a county at large to the Q. B. by *certiorari*, if it appears that a fair trial cannot be had in the county. When, after removal, deft. is ordered to be tried, under Central Criminal Ct. Act, 1856 (c. 16), at the Central Criminal Ct., the ct. will not make it a condition, under sect. 24, that prosecutor shall furnish deft. with evidence which, it is suggested, has been obtained by prosecutor since the taking of the depositions.—*R. v. PALMER* (1856), 5 E. & B. 1024; 26 L. T. O. S. 239; 27 L. T. O. S. 56; 2

Jur. N. S. 235; 20 J. P. Jo. 70, 243; 119 E. R. 762.

Annotation :—*Refd. R. v. Barrett* (1870), 18 W. R. 671.

2551. Bias of the court.—A *certiorari* to remove an indictment from the Old Bailey is not to be granted except upon special cause. On an indictment for libel, it is a sufficient cause if the recorder thinks himself affected by the libel.—*R. v. ORME & NUTT* (1699), 1 Ld. Raym. 486; 91 E. R. 1224.

Annotations :—*Mentd. R. v. Read* (1707), Fortes. Rep. 98; *Anon.* (1732), 2 Barn. K. B. 138; *R. v. Osborne* (1732), Kel. W. 230; *R. v. Griffin & Banyere* (1733), 2 Barn. K. B. 368; *R. v. Williams* (1822), 1 State Tr. N. S. 1291.

2552. —.]—*Certiorari* was granted to prosecutor to remove an indictment found at sessions, on the ground that a magistrate was interested in the matter.—*R. v. JONES* (1836), 2 Har. & W. 293.

2553. — *Defendant member of bench of magistrates.*—The mere fact of a deft. on an indictment for an assault being a member of the bench of magistrates who are to try it, is not a sufficient ground for removing the indictment by *certiorari*.—*R. v. FELLOWES* (1836), 4 Dowl. 607; 1 Har. & W. 648.

2554. — *Allegation of strong prejudice against defendant—Entertained by chairman of quarter sessions.*—The allegation of a strong prejudice entertained against a deft. by the chairman at quarter sessions is not a sufficient ground for granting a *certiorari* to remove an indictment for an assault.—*R. v. JACOBS* (1839), 3 Jur. 999.

2555. — *Defendant son of influential magistrate.*—Where an indictment had been found at the Oxford Sessions against two defts., one of whom was a member of the University &, it was alleged, exercised great influence at the place of trial, & the other deft. was the son of an influential magistrate in the neighbourhood :—*Held* : a *certiorari* would be granted.—*REBAN v. TREVOR & EVANS* (1840), 4 Jur. 292.

2556. — *Magistrate indicted at quarter sessions—Circulating printed account of charges amongst other magistrates.*—Where a magistrate is indicted at quarter sessions, he being in the commission for the county, & he has circulated among the other magistrates a printed account of the charges brought against him, it is a good ground within 5 & 6 Will. 4, c. 33, s. 1, for removing the indictment by *certiorari*.—*R. v. GROVER* (1840), 8 Dowl. 325.

2557. — *Intimacy of chairman of quarter sessions—With father of prosecutrix.*—The ct. will not remove an indictment from the Quarter Sessions, on the ground that the chairman of the ct. is intimate with the father of prosecutrix.—*R. v. RENSHAW* (1841), 5 Jur. 801.

2558. — *Prosecution by City of London—Alderman in commission for Central Criminal Court.*—The alleged ignorance of deft. of the nature of the charges for which he is indicted, owing to a refusal to supply a copy of the indictment, is no reason for the granting of a *certiorari*, nor that the prosecution is instituted by the City of London, the Aldermen of which are in the commission for the Central Criminal Ct., where the

PART IX. SECT. 6. SUB-SECT. 1.—
B. (c) ii.

2542 i. General rule.—Deft. applying for a *certiorari* to remove an indictment from the sessions must show that it is probable the case will not be fairly or satisfactorily tried in the ct. below.—*Re KILLET & PORTER* (1856), 2 P. R. 103.—*CAN.*

2542 ii. —.]—When it *prima facie*

appears to the ct. that a fair & impartial trial cannot be had in a particular place, & such is not displaced by a strong case in answer thereto, the ct. will grant a *certiorari* to remove the proceedings.—*R. v. BALL* (1859), 11 Ir. Jur. 283.—*IR.*

2542 iii. —.]—When a probability of the existence of prejudice to a

substantial extent is established in relation to a county, the ct., in the exercise of its discretion, should not allow the fair & impartial trial of a prisoner to depend upon the power of the officials representing the Crown to order jurors to stand aside, but should remove the proceedings by writ of *certiorari*.—*R. v. BOUGHTON*, [1895] 2 I. R. 386.—*IR.*

Sect. 6.—Purposes of the writ: Sub-sect. 1, B. (c) ii.

indictment is to be tried.—*R. v. FELLOWES* (1847), 9 L. T. O. S. 50; 11 J. P. Jo. 293.

2559. —.]—*R. v. ADAMS* (1848), 12 J. P. Jo. 789.

2560. **Prejudice of jurors—Influenced by prosecutor's attorney—Acting as under-sheriff.**—A *certiorari* was granted to the Old Bailey in perjury *ad instantiam defendantis* on an affidavit that the prosecutor's attorney was under-sheriff of M., & attended the grand jury on finding the bill.—*R. v. WEBB* (1737), 2 Stra. 1068; 93 E. R. 1037.

2561. —.]—*Ex p. FRIEND* (1886), 2 T. L. R. 746, D. C.

2562. —.] **Trial at assizes.**—*R. v. JAMES, STADEN & BROOM*, No. 2520, *ante*.

2563. —.]—A rule *nisi* for a *certiorari* was obtained in order to remove from the Central Criminal Ct. into the High Ct. an indictment by which appt. & another person were jointly indicted for alleged conspiracy to defraud persons who might become debenture holders in the North Wales Quarries, Ltd., & the Welsh Slate Quarries, Ltd. Appt. desired to have a special jury, & that the jury should view the premises, these advantages not being available to deft. at the Central Criminal Ct. He also alleged that for certain reasons there would be a prejudice against him among Central Criminal Ct. jurors:—*Held*: a special jury was unnecessary, view was not required, & allegations of prejudice had not been made out.—*R. v. GYDE, Ex p. GYDE* (1908), 72 J. P. 504, D. C.

2564. **Local prejudice.**—A *certiorari* issued to remove from great sessions, the affidavits stating several facts to show partiality in the gentlemen & freeholders of the county.—*R. v. PARRY & THOMAS* (1758), 2 Keny. 370; 96 E. R. 1213.

2565. —.]—The ct. refused to allow a suggestion to be entered for the purpose of removing the trial from C. into another county, on the alleged ground that titles to duchy property were likely to come in question, with respect to which prejudices existed in C., & that an impartial trial could not be had there.—*R. v. PENFRASE* (1833), 4 B. & Ad. 573; 1 Nev. & M. K. B. 312; 110 E. R. 571.

Annotation:—*Reid. R. v. Holden* (1833), 5 B. & Ad. 347.

2566. —.]—In support of an application to award a *venire* into another county many affidavits were put in, showing that a strong prejudice existed in S. against defts., on the subject of the charge:—*Held*: there were not sufficient grounds laid for removing an indictment from the body of a large county, & the defts. would be discharged.—*R. v. HOLDEN* (1833), 5 B. & Ad. 347; 2 Nev. & M. K. B. 167; 110 E. R. 819.

Annotation:—*Reid. R. v. Barrett* (1870), 18 W. R. 671.

2567. —.]—*REBAN v. TREVOR & EVANS*, No. 2555, *ante*.

2568. —.]—It is no ground for removing the trial of an indictment from a large county, that a strong prejudice exists against deft. in the county town where the trial is to take place.—*R. v. STEPHENSON* (1841), 5 Jur. 341.

2569. —.]—The ct. removed an indictment from the Central Criminal Ct., & changed the venue from London to Westminster, where it was a prosecution instituted by the corp. of the City of London, for a conspiracy in procuring false votes to be given at an election.

There is fair ground to suppose that the excitement which exists may prevent an impartial trial

being obtained in London, & it will be as well to have a special jury to try it (*COLERIDGE, J.*).—*R. v. SIMPSON* (1841), 5 Jur. 462.

2570. —.]—*Certiorari* to remove from a borough, an indictment, when it shall have been found, on the ground of difficult points of law being likely to arise, & that deft. cannot have an impartial trial without removal.—*R. v. —* (1844), 3 L. T. O. S. 208.

2571. —.]—*R. v. —*, No. 2638, *post*.

2572. —.]—*Ex p. FORDE* (1846), 10 J. P. Jo. 387.

2573. —.]—*R. v. LINMAN* (1847), 11 J. P. Jo. 456.

2574. —.]—*R. v. SCALES* (1849), 13 L. T. O. S. 215; 13 J. P. Jo. 361.

2575. —.]—*R. v. JAMES, STADEN & BROOM*, No. 2520, *ante*.

2576. —.]—*R. v. WILLIAMS* (1854), 22 L. T. O. S. 262; 18 J. P. Jo. 118.

2577. —.]—It is not a sufficient ground for the removal of an indictment from assizes under Central Criminal Ct. Act, 1856 (c. 16), s. 3, for trial at the Central Criminal Ct. that, on the occasion of the first apprehension of the prisoner, some months before the time for trial, certain articles & paragraphs had appeared in some papers of the particular town in which the trial would take place, of a nature likely to create prejudice against him, & that the case had become matter of conversation among certain classes in that town, it not appearing either that those papers had a general circulation in the county, or that the case had become matter of general conversation in the county, as the jurors would be taken from the county as well as the town.—*R. v. RUXTON* (1862), 1 New Rep. 90; 11 W. R. 209; 26 J. P. Jo. 773.

2578. —.]—*R. v. BALCAUL* (1877), 41 J. P. Jo. 280, D. C.

2579. —.]—*R. v. PACKER* (1877), 41 J. P. Jo. 100, D. C.

2580. —.]—A person charged with perjury sought to remove the trial, upon the ground of prejudice & strong feeling against him in the county where his trial was to take place:—*Held*: there was no ground for supposing that jurors from the county would not try the case fairly & impartially, & the application must be refused.—*Re APPLICATION FOR CERTIORARI, Ex p. WILLIAMS* (1884), 1 T. L. R. 15, D. C.

2581. —.]—On application for a writ of *certiorari* to remove indictments from a ct. of quarter sessions for a large borough into the High Ct. for trial at the county assizes, it appeared that appt. was a tradesman in the borough, who had been adjudicated bkpt., & was charged with obtaining goods on false pretences. The great majority of his creditors resided in the borough, where considerable feeling against him had been openly expressed by them:—*Held*: notwithstanding that it was possible to keep all the creditors off the juries at the ensuing quarter sessions, it was reasonably probable that a fair & impartial trial could not be had in the borough, & the writ must go.—*R. v. WHITTAKER* (1895), 59 J. P. 197, D. C.

2582. —.]—Application under Central Criminal Ct. Act, 1856 (c. 16), for a *certiorari* by prisoner, who had been committed at N. to take his trial, to remove the case to the Central Criminal Ct. on the ground that by reason of local prejudice it would be impossible for him to have a fair trial by a jury at N.:—*Held*: an order for removal of the case to the Central Criminal Ct. would be made.—*Re MOROSS* (1891), 7 T. L. R. 507, D. C.

2583. —.] **Difficulty in obtaining jury.**—It is

only in very exceptional cases that indictments for felony will be permitted to be removed into the Q. B., & where an application was made for a *certiorari* for such removal from the quarter sessions of a borough upon the ground of local prejudice, & difficulty in obtaining a jury, the ct. recommended an application to the recorder to send the case to the assizes, & the motion was withdrawn.—*R. v. REYNOLDS* (1865), 12 L. T. 580; 13 W. R. 925.

2584. — Number of jurors small.—If the number of jurors in a borough is small, & deft. is intimate with many of them, the ct. will allow an indictment for a libel, found at the sessions for the borough, to be removed by *certiorari*.—*GARBETT v. OUSELEY* (1842), 6 Jur. 193.

2585. — Created by press articles.—An indictment found at the assizes, was allowed to be removed, where it appeared that paragraphs had appeared in the newspapers, which were likely to prejudice the minds of the petty jurors.—*R. v. LEVER* (1838), 1 Will. Woll. & H. 35.

2586. — ——Rule for removal of indictment granted, where libellous articles had appeared in the county papers on deft., with reference to the charge in the indictment, & general prejudice was shown.—*R. v. NEWTON* (1844), 3 L. T. O. S. 166; 8 J. P. 391; *subsequent proceedings* (1845), 1 Cox, C. C. 195.

2587. — ——*R. v. LATTIMER* (1846), 8 L. T. O. S. 173; 10 J. P. Jo. 787.

2588. — ——*R. v. ADAMS* (1848), 12 J. P. Jo. 789.

2589. — Arising from political feeling.—*R. v. SIMPSON*, No. 2569, *ante*.

2590. — ——The ct. will not grant a *certiorari* to remove an indictment upon the suggestion merely that deft. is not likely to have a fair trial on the ground of strong political feeling.—*Ex p. LYNES* (1846), 1 New. Pract. Cas. 390; 1 Saund. & C. 31; 6 L. T. O. S. 353; 1 Cox, C. C. 262.

2591. — ——*R. v. MULCASTER* (1853), 17 J. P. Jo. 117.

iii. Difficult Points of Law arising.

See, generally, CRIMINAL LAW & PROCEDURE.

2592. Whether from Central Criminal Court—Matters of account.—This ct. will remove an indictment by *certiorari*, at the instance of deft., from the Central Criminal Ct. on the suggestion that it involves points of law arising out of proceedings in Chancery relative to matters of account.—*R. v. WARTNABY* (1835), 2 Ad. & El. 435; 111 E. R. 169.

2593. — ——The fact of an indictment being bad in point of law is not a sufficient ground for granting a writ of *certiorari* to remove it from the Central Criminal Ct.—*R. v. TEMPLAR* (1836), 5 Dowl. 249; 2 Har. & W. 430; 1 Nev. & P. K. B. 91.

2594. — ——*R. v. STEWART* (1846), 10 J. P. Jo. 71.

2595. Difficulty must be specifically stated.—The ct. will not grant a *certiorari* on behalf of deft. to remove an indictment from the sessions, on an affidavit that he was advised that difficult points of law would arise, but leave was given to renew the motion at chambers, if a stronger affidavit could be obtained.—*R. v. HARRISON* (1819), 1 Chit. 571.

2596. — ——Deft., applying to remove an indictment from sessions by *certiorari*, on account of the probability that difficult points of law will arise, must state in his affidavit specific grounds on

which legal difficulties will occur, & it is not sufficient to show that the obstruction complained of by the indictment consists of buildings of great value, which have stood 30 or 40 years.—*R. v. JOULE* (1830), 5 Ad. & El. 539; 111 E. R. 1269; *sub nom. R. v. JOWL*, 5 Dowl. 435; 2 Har. & W. 375; 1 Nev. & P. K. B. 28.

Annotation:—Reid. R. v. Thomas (1837), 1 J. P. 72.

2597. — ——(1) On a motion to remove an indictment found at the assizes, on the ground of difficult points of law being likely to arise:—*Held*: it must be stated what those points are.

(2) The necessity of having a special jury is not alone sufficient cause for granting a *certiorari*.—*R. v. GREEN* (1838), 1 Will. Woll. & H. 35.

2598. — ——There appears to be no distinction between indictments for perjury & other offences, as to the necessity of stating specifically the grounds of an application to remove the indictment by *certiorari*, & therefore, where a *certiorari* was moved for, to remove an indictment for perjury into this ct., but it was not stated what the difficulties which were likely to arise at the trial were, the ct. directed a further affidavit to be obtained, supplying this defect, & on such being made, stating that difficult points of law were likely to arise, & it being also stated that the party indicted was anxious to have the advantage of being enabled to move for a new trial, the ct. granted the rule.—*Re BARKER* (1839), 3 J. P. 771.

2599. — ——The question of law likely & expected to arise should be specifically set forth in the affidavit upon which the application for the *certiorari* is made.—*R. v. HODGES* (1845), 1 New Pract. Cas. 201; 5 L. T. O. S. 78; 9 Jur. 665; 1 Cox, C. C. 194; 9 J. P. Jo. 278.

2600. — ——*R. v. DIX* (1846), 10 J. P. Jo. 358.

2601. Accounts.—*R. v. WARTNABY*, No. 2592, *ante*.

2602. Assault.—This ct. will not grant a *certiorari* to remove an indictment for an assault from the sessions unless difficult questions are likely to arise at the trial, or there are allegations of such partiality & injustice, as would prevent deft. from having a fair trial.—*R. v. LECHEMERE* (1840), 4 Jur. 656.

2603. — No suspicion cast upon sessions—Questions involving right to property.—The ct. refused to grant a *certiorari* to remove an indictment for an assault found against a party & his wife at the sessions, when no suspicion was cast upon the sessions, although it was alleged that the assault arose out of a claim to property, & that difficult questions, involving the right to the property, might arise, & that it was wished to have the benefit of a special jury.—*CLARK v. WILLINGTON* (1843), 7 Jur. 44.

2604. — Defendant to enter into recognisances.—*R. v. COLWELL* (1846), 8 L. T. O. S. 124; *sub nom. R. v. CALDWELL*, 10 J. P. Jo. 758.

Annotation:—Mentd. R. v. Mitchell (1847), 11 J. P. Jo. 70.

2605. — Questions of title.—*Ex p. HILL & FISHER* (1847), 9 L. T. O. S. 251; 11 J. P. Jo. 504.

2606. — Riot—Rights & interest in freehold property.—*R. v. —* (1846), 10 J. P. Jo. 373.

2607. — ——*R. v. SMITH* (1848), 12 J. P. Jo. 487.

2608. — — Forcible entry—Right to immediate possession of property.—*R. v. JOHNSON* (1847), 11 J. P. Jo. 102.

2609. — Forcible entry.—On a motion for a *certiorari* to remove this indictment, which had

PART IX. SECT. 6, SUB-SECT. 1.—B. (c) iii.

2595 i. Difficulty must be specifically stated.—If difficulties on points of law form the ground of application they must be specifically stated.—*Re KELLETT & PORTER* (1856), 2 F. R. 102.—*CAN.*

Sect. 6.—Purposes of the writ: Sub-sect. 1, B. (c) iii., iv. & v.]

- been found at the Central Criminal Ct., for an assault & a forcible entry, into this ct., on the ground that difficult points of law would probably arise, & that it was a fit case to be tried by a special jury:—*Held: certiorari* would be granted.—*R. v. JOHNSTONE* (1847), 8 L. T. O. S. 395.
2610. *Bastardy order—Disobedience to.*—*R. v. CLEASBY* (1844), 8 J. P. Jo. 85.
2611. *Compounding prosecution—Motion in arrest of judgment—Exceptions of great weight to be considered.*—*R. v. WHIGHT* (1730), 1 Barn. K. B. 430; 94 E. R. 289.
2612. *Conspiracy—Libel.*—*ANON.* (1838), 2 J. P. 727.
2613. ————*R. v. WILKS* (1840), 4 Jur. 1061.
2614. ————*Indictment against attorney.*—*Re HARE* (1842), 6 Jur. 326.
2615. ————*To defraud creditors.*—*Motion for a certiorari* to remove an indictment found at the Central Criminal Ct. for a conspiracy to defraud the creditors under a *fiat* in bkpcy. against B. It was suggested that the case ought to be tried before a special jury & before one of the superior judges, many nice points of law being likely to arise:—*Held: a rule* would be granted.—*R. v. KING* (1843), 1 L. T. O. S. 149.
2616. ————*To defraud customs.*—*R. v. BLAKE* (1844), 3 L. T. O. S. 79; 8 J. P. Jo. 342.
2617. ————*To bring action against prosecutor.*—*R. v. LEWIS* (1844), 4 L. T. O. S. 141.
2618. ————*To defraud person of goods.*—*A motion for a certiorari* to remove an indictment, which had been found at the Central Criminal Ct. for a conspiracy to defraud a person of his goods, into this ct. on the ground that difficult points of law would arise, was granted.—*R. v. DITCH* (1844), 3 L. T. O. S. 208.
2619. ————*R. v. POUND, R. v. MOTT* (1844), 8 J. P. Jo. 531.
2620. ————*To obtain money.*—*R. v. NEWMAN* (1850), 14 J. P. Jo. 367.
2621. ————*Motion for a certiorari* to remove an indictment found at the Central Criminal Ct. against C. & D. for a conspiracy. The ground of the application was that difficult points of law were likely to arise:—*Held: the writ* would be granted.—*R. v. COHEN & DAVIS* (1850), 15 L. T. O. S. 118; 14 J. P. Jo. 320.
2622. ————*R. v. RIDLEY* (1848), 12 J. P. Jo. 425.
2623. ————*Combination of workmen.*—*R. v. HEWETT* (1851), 15 J. P. Jo. 99.
2624. ————*Obtaining money under false pretences.*—*R. v. ALLEYNE* (1851), 17 L. T. O. S. 133; 15 J. P. Jo. 401.
- Annotation.—Mentd. Re Shropshire JJ., Ex p. Blewitt* (1866), 14 L. T. 598.
2625. ————*& perjury—Complicated facts.*—*R. v. HORNIDGE* (1852), 18 L. T. O. S. 247; 16 J. P. Jo. 53.
2626. ————*Colourable title to property.*—*R. v. WHITEHOUSE* (1852), 16 J. P. Jo. 117.
2627. ————*Security for costs.*—*Re BARBER* (1886), 2 T. L. R. 686, D. C.
2628. *Churchwardens—Omitting to convene meeting.*—*Ex p. HOGG* (1850), 14 J. P. Jo. 270.
2629. *False pretences—Indictment against attorney—Complexity & difficulty.*—*R. v. JONES* (1877), 41 J. P. Jo. 84, D. C.
2630. *Forcible entry—& detainer.*—*R. v. THOMAS*, No. 2675, *post*.
2631. ————*Disputed possession.*—*R. v. FINNEY* (1849), 13 J. P. Jo. 87.
- See, also, Nos. 2608, 2609, ante.*
2632. *Highway—Non-repair of—Questions as to boundary.*—*R. v. DESBOROUGH (INHABITANTS)* (1849), 13 J. P. Jo. 729.
2633. ————*R. v. GROSVENOR DISTRICT TRUSTEES* (1850), 14 J. P. Jo. 285.
2634. ————*R. v. ST. GEORGE'S, HANOVER SQUARE* (1850), 14 J. P. Jo. 335.
2635. ————*Whether road highway.*—*R. v. ENGLETON* (1853), 17 J. P. Jo. 374.
2636. ————*Obstruction of—Liability of tenant in possession—Application refused.*—*R. v. PHILLIPS* (1845), 9 J. P. Jo. 772.
2637. *Improperly receiving money for sale of cadetships.*—*R. v. MOORE, R. v. KENDAL* (1847), 11 J. P. Jo. 456.
2638. *Improvement Act—Violation of.*—*Motion for a certiorari* to remove into this ct. an indictment found at the last sessions for M. against appct. for having violated one of the clauses of a local improvement Act on the grounds that several nice questions will arise as to the construction of the Act, & that he was not likely to have an impartial trial at the sessions, as all the inhabitants were interested:—*Held: a certiorari* would be granted.—*R. v. (1844), 4 L. T. O. S. 161.*
2639. *Libel—Threatening to publish for extortion—First indictment framed under statute.*—*R. v. WALLER* (1849), 13 J. P. Jo. 87.
2640. *Nuisance—Exposing goods for sale in highway—Highway formerly market place.*—*A motion* on the part of deft. for a *certiorari* to remove an indictment for a nuisance found at the last sessions for the city & borough of B. Deft. was indicted for committing a nuisance in the highway by exposing goods there for sale, the highway having formerly been the market place of the city, & which market place, it was contended, had never legally been removed:—*Held: a certiorari* would be granted.—*R. v. COOKSEY* (1849), 14 L. T. O. S. 185; 13 J. P. Jo. 778.
2641. ————*Under Public Health Act.*—*R. v. ANDUS* (1853), 17 J. P. Jo. 116.
2642. ————*Erection of pier.*—*Motion for a certiorari* to remove an indictment for nuisance in erecting a pier from the Central Criminal Ct. on the ground that the indictment would involve many important questions of law, & it was desirable to have a special jury, & to have a view:—*Held: the rule* would be granted.—*R. v. HASLEWOOD* (1854), 24 L. T. O. S. 119; 18 J. P. Jo. 771.
2643. *Overseers—Defendants accused of taking upon themselves duties of.*—*R. v. GIBSON* (1844), 2 L. T. O. S. 352.
2644. *Perjury.*—*Re BARKER*, No. 2598, *ante*.
2645. ————*Accounts—Application refused.*—*The ct.* refused to grant a writ of *certiorari* for removing an indictment for perjury from the county of L. to London, to be tried by a special jury, upon a suggestion that the truth of the evidence given by deft. would depend upon the result of a long series of accounts, & that a point of law was likely to be raised in his favour.—*R. v. MORTON* (1842), 1 Dowl. N. S. 543.
2646. ————*In answer in Chancery.*—*ANON.* (1843), 1 L. T. O. S. 234.
2647. ————*R. v. JACKSON* (1843), 1 L. T. O. S. 82.
2648. ————*R. v. ROGERS* (1844), 8 J. P. Jo. 342.
2649. ————*Pure questions of law likely to arise.*—*R. v. HARDY* (1847), 11 J. P. Jo. 806; *subsequent proceedings*, 11 J. P. Jo. 855, 903.
2650. ————*R. v. FETHERSTONHAUGH* (1849), 13 J. P. Jo. 251.
2651. ————*R. v. KINCAIRD & WARE* (1851), 15 J. P. Jo. 768.

2652. Tithingman—Refusal to serve after election.]—*Ex p.* FRANKLIN (1851), 15 J. P. Jo. 129.

iv. Trial with Special Jury.

See, generally, CRIMINAL LAW & PROCEDURE.

2653. General rule—Not of itself a sufficient ground.]—The necessity of having a special jury is not alone sufficient cause for granting a *certiorari*.—*R. v. GREEN*, No. 2597, *ante*.

2654. — Unusual prosecution at suit of Crown—Crown officers to prosecute.]—It is no sufficient ground for granting a *certiorari* to remove an indictment for a conspiracy to defraud the revenue from the Central Criminal Ct. that deft. is a reputable tradesman, & that he believes the prosecution has been instituted from malicious motives by one of the witnesses.

It is a sufficient ground, however, for the writ, that the prosecution is an unusual one, & is instituted at the immediate instance of the Crown, & upon which the high Crown officers will attend to prosecute, & that the deft. therefore desires a special jury.—*R. v. JEFFS & LANG* (1845), 1 New Pract. Cas. 197; 5 L. T. O. S. 79; 9 Jur. 580; 1 Cox, C. C. 194; 9 J. P. Jo. 293.

2655. —.]—*R. v. WILSON* (1852), 16 J. P. Jo. 133.

2656. — Special jury essential in interests of justice—Removal from Central Criminal Court.]—*R. v. ASPINALL* (1875), 39 J. P. Jo. 86.

2657. Assault—Questions of property likely to arise.]—*CLARK v. WILLINGTON*, No. 2603, *ante*.

2658. — & forcible entry.]—*R. v. JOHNSTONE*, No. 2609, *ante*.

2659. —.]—*R. v. BRIDGEMAN* (1852), 16 J. P. Jo. 133.

2660. —.]—*R. v. KING*, No. 2549, *ante*.

2661. Churchwardens—Omitting to convene meeting.]—*Ex p. HOGG* (1850), 14 J. P. Jo. 270.

2662. Conspiracy.]—*R. v. WILKS* (1840), 4 Jur. 1061.

2663. —.]—*Re HARE* (1842), 6 Jur. 326.

2664. — To drown a mine.]—*R. v. WARD* (1843), 2 L. T. O. S. 127.

2665. — To defraud—Creditors.]—*R. v. KING*, No. 2615, *ante*.

2666. — Customs—Prosecuted by law officers.]—*R. v. JEFFS & LANG*, No. 2654, *ante*.

2667. — Prospective debenture holders—Mining companies.]—*R. v. GYDE*, *Ex p. GYDE*, No. 2563, *ante*.

2668. — To bring action against prosecutor—Attorney of prosecutor made defendant.]—*R. v. LEWIS* (1844), 4 L. T. O. S. 141.

2669. — Important questions of law.]—*R. v. KINCAID & WARE* (1851), 15 J. P. Jo. 768.

2670. — Obtaining money by false pretences—Difficult points of law.]—*R. v. ALLEYNE* (1851), 17 L. T. O. S. 133; 15 J. P. Jo. 401.

Annotation:—*Mentd. Re Shropshire J.J.*, *Ex p. Blewitt* (1866), 14 L. T. 598.

2671. — & perjury—Complicated facts.]—*R. v. HORNIDGE* (1852), 18 L. T. O. S. 247; 16 J. P. Jo. 53.

2672. —.]—*Re BARBER* (1886), 2 T. L. R. 686, D. C.

2673. False pretences—Indictment against attorney—Complexity & difficulty.]—*R. v. JONES* (1877), 41 J. P. Jo. 84, D. C.

See, also, No. 2024, *ante*.

2674. Felony—Encroachment by working mines.]—*Ex p. SALTER* (1848), 12 J. P. Jo. 74.

2675. Forcible entry & detainer.]—A *certiorari* was granted to a prosecutor to remove an indictment for forcible entry & detainer from the sessions, on the ground that difficult points of law were likely to arise on the trial, & that it would be necessary to have a special jury.—*R. v. THOMAS* (1837), Will. Woll. & Dav. 580.

See, also, No. 2609, *ante*.

2676. Fraud—Not removed from Central Criminal Court—Falsification of accounts—Mere question of dishonesty.]—*R. v. BALCAUL* (1877), 41 J. P. Jo. 260, D. C.

2677. — Fraudulently obtaining goods.]—*R. v. IVIMEY* (1887), 4 T. L. R. 71, D. C.

2678. Larceny—Indictment against attorney—For stealing a rate book.]—*R. v. ADAMS* (1848), 12 J. P. Jo. 789.

2679. Libel—Publishing obscene—Removal refused.]—*R. v.* — (1837), 1 Jur. 239.

2680. —.]—*R. v. COOPER* (1844), 4 L. T. O. S. 161.

2681. Misdemeanour.]—*R. v. DANTON* (1846), 10 J. P. Jo. 388.

2682. Nuisance—Erection of pier.]—*R. v. HASLEWOOD*, No. 2642, *ante*.

2683. Obstruction of highway & railway—By working quarry.]—Where on a motion for a *certiorari* to remove into this ct. two indictments found at the last assizes for C., against the defts., for working a quarry, so as to obstruct a public highway, & also for constructing a railway so as to interfere with public rights, it was alleged that a view would be necessary, that it would be proper to try the case by a special jury, & that points of law would arise:—*Held*: a *certiorari* would be granted.—*R. v. STANLEY* (1844), 4 L. T. O. S. 143; 8 J. P. Jo. 837.

2684. Perjury—Matters of account.]—*R. v. HARDY* (1847), 11 J. P. Jo. 806; *subsequent proceedings*, 11 J. P. Jo. 855, 903.

2685. —.]—*R. v. SAVAGE* (1848), 12 J. P. Jo. 103.

See, also, No. 2625, *ante*.

v. View.

2686. General rule—Discretion of court.]—A rule for a *certiorari* to remove an indictment from the sessions into this ct., on the ground that grave questions of law are likely to arise, & that a view is necessary, which cannot be had at sessions, is not necessarily a rule absolute in the first instance, but it rests in the discretion of the ct. so to grant it.—*R. v. BIRD* (1845), 2 Dow. & L. 939; 1 New Pract. Cas. 190; 14 L. J. M. C. 179; 5 L. T. O. S. 39, 58; 9 Jur. 492; 9 J. P. Jo. 245, 263.

2687. —.]—Where it appears to be necessary for the purpose of a criminal trial that the jury should have a view of premises situated in a different county from that in which the offence was committed, this is sufficient reason for ordering the trial to take place in such county.—*R. v. SHELDON* (1875), 32 L. T. 27; 39 J. P. 232.

2688. Conspiracy to defraud—Debenture holders in companies—View of premises not essential.]—*R. v. GYDE*, *Ex p. GYDE*, No. 2563, *ante*.

2689. Highways—Non-repair of.]—On a motion for a *certiorari* to remove an indictment, which was preferred at the sessions, for the non-repair of a highway, into this ct., as the question as to liability would be raised, & it would also be necessary to have a view:—*Held*: the rule would

PART IX. SECT. 6, SUB-SECT. 1.—B. (c) v.

2686 i. General rule—Discretion of court—Capital offence.]—*R. v. M'NAMARA* (1878), 4 L. R. Ir. 185.—IR.

Sect. 6.—Purposes of the writ: Sub-sect. 1, B. (c) v. & vi., (d); sub-sect. 2, A.]

be granted.—*R. v. LUDGERSHALL (INHABITANTS) (1844), 4 L. T. O. S. 121.*

2690. Obstruction of highways & railways—By working quarry.]—R. v. STANLEY, No. 2683, ante.

2691. Nuisance.]—Motion for a certiorari to remove an indictment for a nuisance found at the assizes in S. The reason alleged was that deft. wanted a view, which he could not have granted him at assizes:—Held: a rule to show cause would be made.—ANON. (1732), 2 Barn. K. B. 214; 94 E. R. 457.

2692. —Erection of pier.]—R. v. HASLEWOOD, No. 2642, ante.

vi. Other Grounds.

2693. To remove indictment found in private jurisdiction—Malicious prosecution.]—R. v. CHIPING-NORTON (1726), 1 Barn. K. B. 7; 94 E. R. 5.

Annotation:—Reid. R. v. Jeffs & Lang (1845), 9 J. P. Jo. 293

2694. Not previous punishment of defendant.]—R. v. ELFORD (1730), 2 Stra. 877; 93 E. R. 911; sub nom. R. v. ETFORD, 1 Sess. Cas. K. B. 323.

2695. Absence of judges from Old Bailey.]—A certiorari was granted, to remove an indictment of perjury from the Old Bailey, on the part of deft. upon an affidavit that he had twice paid costs for not going on to trial, the judges being gone away, which the ct. allowed to be a special reason, that distinguished this from the common case where certiorari is denied.—R. v. MORGAN (1736), 2 Stra. 1049; 93 E. R. 1025.

Annotation:—Expld. R. v. Ferguson (1737), Lee temp. Hard. 369.

2696. Not defective nature of indictment.]—R. v. TEMPLAR, No. 2593, ante.

2697. Not that questions likely to arise—Relating to acquittal on former indictment.]—Certiorari to remove an indictment for keeping a gaming house refused to prosecutor, where it was suggested that questions would arise on an acquittal on a former indictment, in which the house had been misdescribed.—R. v. HANCOCK (1836), 2 Har. & W. 293.

2698. General difficulty of case.]—R. v. JOSEPH, No. 3214, post.

2699. —.]—R. v. LIVERPOOL & MIDLAND COUNTIES RY. Co. (1844), 3 L. T. O. S. 106; 8 J. P. Jo. 357.

2700. To remove indictment—To be tried in same court as action—Involving same subject-matter.]—R. v. BROOMHEAD (1843), 7 Jur. 559; sub nom. ANON., 7 J. P. 241.

2701. Technical nature of evidence to be adduced.]—Ex p. WILLIAMS (1844), 2 L. T. O. S. 352.

2702. Not to enable defendant to obtain copies of indictment.]—R. v. FELLOWES, No. 2558, ante.

2703. Alleged ignorance of charges.]—R. v. FELLOWES, No. 2558, ante.

PART IX. SECT. 6, SUB-SECT. 2.—A.

2709 i. Judicial acts—Not ministerial acts—Regulation of Board of Education.]—R. v. BOARD OF EDUCATION (1871), 2 V. R. (Law) 176.—AUS.

2709 ii. —Acts of university senate.]—Ex p. JACOB (1861), 5 All. 163.—CAN.

2709 iii. —Order of minister of agriculture declaring patent void.]—The duties of the minister of agriculture in relation to the avoidance of patents are ministerial, & not subject to reversal or review by a ct. of law.—Re BELL TELEPHONE Co. (1885), 9 O. R. 339.—CAN.

2709 iv. —Order of Municipal Secretary to sell real estate of residents

for assessment purposes.]—R. v. SIMPSON (1880), 20 N. B. R. 472.—CAN.

2709 v. —Resolution of municipal council.]—Re NEW GLASGOW TOWN COUNCIL (1897), 30 N. S. R. 107.—CAN.

2709 vi. —Municipal assessment roll.]—A certiorari was directed to the Road Comrs., to remove the record of the assessment roll of a district assessing the inhabitants for road taxes, & the return to the county treasurer of persons who had made default; also to the stipendiary magistrate for the county to remove the record of a return of defaulters & the warrant of distress issued thereon: Held: setting aside the writ, the

2704. Wealth or reputation of defendant—Writ granted.]—R. v. WELLS (1723), 1 Stra. 549; 93 E. R. 693.

Annotation:—Consd. R. v. Jeffs & Lang (1845), 9 J. P. Jo. 293.

2705. —.]—R. v. — (1843), 1 L. T. O. S. 234; subsequent proceedings, sub nom. R. v. SCOTT, 1 L. T. O. S. 260.

2706. —Writ refused.]—R. v. GOULSTON (1724), Sess. Cas. K. B. 91; 93 E. R. 92; sub nom. R. v. GUNSTON, 1 Stra. 583.

2707. —.]—R. v. PUSEY (1726), 1 Barn. K. B. 5; 2 Stra. 717; Sess. Cas. K. B. 92; 94 E. R. 3.

2708. —.]—R. v. BLUNT (LADY) (1731), 1 Barn. K. B. 445; 94 E. R. 299.

Annotation:—Mentd. Anon. (1734), 2 Barn. K. B. 447.

(d) Procedure.

See Sect. 9, sub-sect. 2, post.

SUB-SECT. 2.—TO QUASH.

A. In respect of What Acts or Proceedings.

As to what is a court, *see* COURTS, pp. 98-100, ante.

To what courts writ may issue.]—*See* Sect. 4, ante.

At what stage of proceedings writ may issue.]—*See* Sect. 8, ante.

Statutory restrictions.]—*See* Sect. 7, post.

2709. Judicial acts—Not ministerial acts.]—A certiorari does not lie for removing a warrant of a justice of the peace.

It is essential to a conviction that it be a judicial act, but the issuing of the warrant in the present case was a ministerial act (LEE, C.J.).—*R. v. LEDIARD (1751), Say. 6; 96 E. R. 784.*

Annotations:—Consd. It. v. Woodhouse, [1906] 2 K. R. 501. Reid. It. v. Lloyd (1783), Cald. Mag. Cas. 309. Mentd. R. v. Hudson (1845), 4 L. T. O. S. 353.

2710. —.]—A certiorari does not lie for other than judicial acts.—R. v. LLOYD (1783), Cald. Mag. Cas. 309.

Annotations:—Reid. R. v. Hatfield Peverel (1849), 14 Q. B. 298; R. v. Aberdare Canal Co. (1850), 14 Jur. 735; It. v. Woodhouse, [1906] 2 K. B. 501.

2711. —Distress warrant for poor rate.]

—A certiorari to bring up a warrant of distress for a poor rate, on the ground that the party had not been previously heard or summoned was refused. The remedy in such a case must be by appeal or action.

No such certiorari has ever been granted. I do not think the granting of the warrant is a judicial act (TAUNTON, J.).—*Ex p. TAUNTON (1831), 1 Dowl. 54; sub nom. R. v. SURREY JJ., Ex p. TAUNTON, 9 L. J. O. S. M. C. 120.*

Annotations:—Reid. It. v. Nicholson, etc., Bolton JJ., R. v. Greenhalgh, etc., Bolton JJ., Ex p. Bamber (1899), 81 L. T. 257; R. v. Webber (1899), 16 T. L. R. 1.

proceedings were of a purely ministerial character, & not a proper subject for certiorari.—*R. v. CORBIN (1903), 36 N. S. R. 275.—CAN.*

2709 vii. —Taxing of costs under Land Clauses (Taxation of Costs) Act, 1895.]—The function of the Taxing Master in taxing costs under the above Act, is ministerial & not judicial, & his certificate, allowing the costs of such inquiry, are not quashed on certiorari.—R. v. GOFF, [1905] 2 I. R. 121.—IR.

2709 viii. —Examination & passing of accounts by auditor for capitation tax.]—The function of an auditor in examining & passing the accounts of a District Asylum for the

2712. — — — **Distress warrant for sum due under maintenance order.**—The ct. refused a writ of *certiorari* to quash a distress warrant issued by justices for a sum alleged to be due under a maintenance order, on the ground that the issuing of the warrant was a ministerial & not a judicial act.—*R. v. WEBBER* (1899), 16 T. L. R. 1, D. C.

2713. — — — **Not order of Secretary of State—Under Local Government Act, 1858 (c. 98).**—By sect. 75 of the above Act the Secretary of State, upon petition of the Local Board of Health & after inquiry, may by provisional order empower that board to put in force with reference to the land referred to in the order the powers of Lands Clauses Consolidation Act, 1845 (c. 18), with respect to the purchase & taking of land otherwise than by agreement, but the provisional order so made shall be of no validity unless it has been confirmed by Act of Parliament, & it shall be lawful for the Secretary of State, as soon as conveniently may be, to obtain such confirmation, & the Act confirming such order shall be deemed to be a public general Act:—*Held*: such order could not be removed by *certiorari* in order to be quashed.

The provisional order has no effect until it is converted into law. Therefore we should usurp functions which do not belong to us if we stepped in between the provisional order & the exercise of the Parliamentary will, it would be beyond our proper scope of action to quash that order (COCKBURN, C.J.).

The order is not a judicial one such as to justify the ct. in removing it (BLACKBURN, J.).—*R. v. HASTINGS BOARD OF HEALTH* (1865), 6 B. & S. 401; 122 E. R. 1243; *sub nom.* FREWIN v. HASTINGS LOCAL BOARD OF HEALTH, 6 New Rep. 142; 34 L. J. Q. B. 159; 12 L. T. 346; 29 J. P. 711; 11 Jur. N. S. 670; 13 W. R. 678.

2714. — — — **The making of an order for the issue of a licence or certificate by the Ct. of the Co. of Watermen & Lightermen of the river Thames is not a judicial but an administrative act, & consequently such an order cannot be removed into the High Ct. by *certiorari*.**—*R. v. WATERMEN'S CO.*, [1897] 1 Q. B. 659; *sub nom.* *R. v. LUCEY*, *Ex p.* GOSLING, 66 L. J. Q. B. 308, D. C.

2715. — — — **Not appointment of justices' clerk.**—The appointment by justices of a justices' clerk is not a judicial act, & a *certiorari* will not lie to remove any proceedings or order of justices in that behalf.—*R. v. DRUMMOND*, *Ex p.* SAUNDERS (1903), 88 L. T. 833; 67 J. P. 300; 1 L. G. R. 567, D. C.

2716. — — — **—**—*R. v. WOODHOUSE*, No. 2421, ante.

2717. — — — **Appointment by justices of overseers of the poor—Alternative remedy.**—WARWICK BOROUGH CASE (1734), 2 Stra. 991; 1 Bott's Poor Law, 6th ed. 53; 93 E. R. 988; *sub nom.* *R. v. WARWICK BOROUGH JJ.*, Cunn. 99.

Annotation:—*Refd.* *R. v. Harman* (1738), Andr. 343.

2718. — — — **—**—The ct. will not grant a *certiorari* in the first instance to remove the order for the appointment of overseers for the purpose of having it quashed, on a suggestion that the justices made the appointment from corrupt &

improper motives, the propriety of the appointment being matter of appeal to sessions.—*R. v. SOMERSETSHIRE JJ.* (1822), 1 Dow. & Ry. K. B. 443; 1 Dow. & Ry. M. C. 116.

Annotation:—*Consd.* *R. v. Cambridgeshire JJ.* (1835), 4 Ad. & El. 111.

2719. — — — **—**—Where it is a question whether a person appointed an overseer by a justice's order is a householder, the ct. will not grant a *certiorari* to bring up the order for the purpose of quashing it. The objection must be taken by appeal to quarter sessions.—*Ex p.* PUDDING NORTON OVERSEERS (1864), 4 New Rep. 167; 10 L. T. 386; *sub nom.* *Re* PUDDING NORTON OVERSEERS, 33 L. J. M. C. 136; 28 J. P. 454; 12 W. R. 762.

2720. — — — **—**—After an appointment of four overseers for a parish by the magistrates at one meeting they are *functi officio*, & no other magistrates can afterwards, upon the claim of one of the persons so appointed to be exempted, appoint another in his place, but the party must appeal to sessions to get his discharge. This objection to the second appointment may be disclosed to this ct., on affidavit upon the removal of the appointment hither by *certiorari*, who will thereupon quash the same.—*R. v. GREAT MARLOW (INHABITANTS)* (1802), 2 East, 244; 102 E. R. 362.

Annotations:—*Consd.* *R. v. Hoole*, etc. JJ. (1860), 2 L. T. 472. *Refd.* *R. v. Cambridgeshire JJ.* (1835), 5 Nev. & M. K. B. 440; *R. v. Lancashire JJ.* (1860), 29 L. J. M. C. 244. *Mentd.* *R. v. James* (1814), 2 M. & S. 321; *R. v. Hinchliff & Baker*, Cheshire JJ. (1847), 11 Jur. 514.

2721. — — — **—**—An appointment by two justices of overseers of the poor may be removed into this ct. by *certiorari*, without appealing against it to quarter sessions, & this ct. will go into the question upon affidavit, whether the place for which the appointment is made be a township or vill, & if it appear by the affidavits that it is not, & be not stated to be such, or that it is reputed to be such, the ct. will quash the appointment.—*R. v. STANDARD HILL (INHABITANTS)* (1815), 4 M. & S. 378; 105 E. R. 874.

Annotations:—*Refd.* *R. v. Marriott* (1838), 12 Ad. & El. 35, n.; *R. v. Worcestershire JJ.* (1838), 3 Nev. & P. K. B. 434. *Mentd.* *R. v. Lane* (1822), 5 B. & Ald. 488; *Clayton v. Meadows* (1812), 2 Hare, 26; *R. v. Watson* (1868), 9 B. & S. 219.

2722. — — — **—**—*R. v. WEST RIDING JJ* (1849), 13 J. P. 52.

2723. — — — **—**—*R. v. PYE, ETC. JJ.*, *Ex p.* ALLREWS HAYES, STAFFORDSHIRE (LANDOWNERS) (1855), 19 J. P. Jo. 70.

2724. — — — **—**—A rule *nisi* having been obtained for a *certiorari* to remove an order of justices appointing overseers for a parish:—*Held*: the right to appoint overseers of the poor was vested by law solely in the justices, who might make such appointment, whether the inhabitants had nominated persons for the office or not.—*R. v. LANCASHIRE JJ.* (1860), 29 L. J. M. C. 244; *sub nom.* *R. v. HOOLE*, 2 L. T. 472; 24 J. P. 438; *sub nom.* *R. v. LANCASHIRE JJ.*, *Ex p.* ASHWORTH, 8 W. R. 588.

2725. — — — **Order of sessions as to fees—Receivable by officer of court.**—A table of the fees & allowances to be taken by the clerk of the peace for the county of S. was, in 1826, duly settled &

purpose of the capitation grant under Local Government (Ireland) Act, 1898, is ministerial or administrative, & not judicial. Such audit cannot be the subject of *certiorari* unless made so by statute.—*R. v. CONSIDINE*, [1917] 2 I. R. 1.—IR.

b. — — — **Validity of municipal bye-law.**—*R. v. ON HING* (1884),

1 B. C. R., Pt. II., 148.—CAN.

c. — — — **—**—*TRAVES v. NELSON CITY* (1899), 7 B. C. R. 48.—CAN.

d. — — — **Proceedings before commissioner of works & mines.**—*R. v. CHURCH* (1892), 23 N. S. R. 347.—CAN.

e. — — — **Resolution of county council authorising secretary-treasurer**

to pay over fines under Canada Temperance Act.]—*Ex p.* KYLE (1893), 32 N. B. R. 212.—CAN.

f. — — — **Resolution of municipal council fixing inspector's salary & fees**—50 *Vid. c. 4*, s. 144.—*Ex p.* MCCULLY (1893), 32 N. B. R. 126.—CAN.

g. — — — **Resolution of licence commissioners.**—*R. v. POINT GREY*

SECT. 6.—Purposes of the writ: Sub-sect. 2, A.]

approved by the sessions, & confirmed by the judges of assize, under 57 Geo. 3, c. 91. It authorised the taking of traverse & other fees from defts. in misdemeanour, & was acted upon till 1844, when the sessions made an order that no officer of the ct. should thereafter take or demand any fee or payment from any deft. in misdemeanour. 8 & 9 Vict. c. 114, was afterwards passed, which prohibits the taking of certain fees from defts. who are acquitted, or discharged by proclamation. On motion to quash the above orders, removed by *certiorari*:—*Held*: the order was a judicial proceeding, removable by *certiorari*.—*R. v. COLES* (1845), 8 Q. B. 75; 1 New Mag. Cas. 414; 2 New Sess. Cas. 144; 15 L. J. M. C. 10; 6 L. T. O. S. 120; 10 J. P. 105; 10 Jur. 352; 115 E. R. 802.

Annotations:—*Reid. R. v. Hatfield Peverel* (1849), 14 Q. B. 298; *R. v. Aberdare Canal Co.* (1850), 14 Jur. 735. *Mentd. Wray v. Chapman* (1850), 14 Q. B. 742; *Reddish v. Hitchinor* (1878), 48 L. J. M. C. 31.

2726. — *Not certificate of admission of lunatic into asylum.*—A certificate for the admission of a lunatic into an asylum, signed by a clergyman & overseer, under 8 & 9 Vict. c. 100, s. 48, is not removable by *certiorari*.

The objection that such a certificate is not properly the subject of a *certiorari*, may be taken on showing cause against a rule to quash the certificate after it had been removed.—*R. v. HATFIELD PEVEREL* (CHURCHWARDENS & OVERSEERS) (1849), 14 Q. B. 298; 3 New Mag. Cas. 180; 3 New Sess. Cas. 610; 18 L. J. M. C. 225; 13 L. T. O. S. 383; 13 J. P. 650; 13 Jur. 1070; 117 E. R. 117.

Annotations:—*Reid. R. v. Crowan* (1849), 14 Q. B. 221. *Mentd. R. v. Minster* (1850), 14 Q. B. 349.

2727. — *Consent & approbation of canal commissioners—Proceedings entered in minute book.*—By statute incorporating a canal co., certain landowners were appointed comrs. for settling all questions & differences between the co. & the landowners generally. The determinations of the comrs., the verdicts of juries & the comrs.' judgments thereon were to be deposited with the clerk of the peace among the records of the sessions. All orders & proceedings of the comrs. were to be entered in a book, signed & be deemed as originals & accepted in evidence. No comr. was to act when interested. The canal co. were to make bridges over the canal for the convenience of landowners as the comrs. should order, but if bridges so ordered should be found insufficient, landowners were empowered to make bridges at their own cost, with the approbation of the comrs. By an entry of the comrs.' proceedings made as above it appeared that application was made on behalf of B. to the comrs. who after hearing evidence gave their consent & approbation for the building of a bridge at B.'s own cost. The bridge was not wanted for B.'s use, but to bring coal from a colliery lying beyond, to a railway & thence by that railway instead of by the canal. Several directors of the railway co. acted as comrs. when the application was granted:—*Held*: (1) their consent was a judicial act & could be brought up by *certiorari*, (2) by reason of the interest they had in the result the proceedings were void.—*R. v. ABERDARE*

CANAL CO. (1850), 14 Q. B. 854; 4 New Mag. Cas. 123; 19 L. J. Q. B. 251; 15 L. T. O. S. 453; 14 J. P. 497; 14 Jur. 735; 117 E. R. 328.

Annotations:—*As to* (1) *Reid. R. v. Woodhouse*, [1906] 2 K. B. 501. *Generally, Reid. R. v. Salford Overseers* (1852), 16 Jur. 907. *Mentd. Wildes v. Russell* (1866), Har. & Ruth. 689.

2728. — *Grant of licence for sale of intoxicating liquor—By solicitor of excise.*—A licence for the sale of beer granted by the solr. of excise without the production of a certificate from the overseer, required by Beerhouse Act, 1840 (c. 61), s. 2, is not a judicial act removable into the Ct. of Q. B. by *certiorari*.—*R. v. SALFORD OVERSEERS* (1852), 18 Q. B. 687; 21 L. J. M. C. 223; 19 L. T. O. S. 165; 16 Jur. 907; 118 E. R. 259.

Annotation:—*Reid. R. v. Woodhouse*, [1906] 2 K. B. 501.

2729. — *Order of licensing justices.*—On the hearing, at a general annual licensing meeting, of an application for a new licence for a hotel, witnesses were called on behalf of persons who opposed the granting of the licence, & these witnesses gave evidence on oath. Another person then appeared to oppose, & proposed to make statements of fact. The justices required that he should be sworn. He refused, & they declined to hear him, & granted the licence. On an application for a *certiorari*:—*Held*: the *certiorari* ought not be granted. *Semble*: as the justices at the licensing meeting were not acting as a ct. of summary jurisdiction, but in an administrative capacity, *certiorari* would not lie.—*R. v. SHARMAN, Ex p. DENTON*, [1898] 1 Q. B. 578; 67 L. J. Q. B. 460; 78 L. T. 320; 62 J. P. 206; 46 W. R. 367; 14 T. L. R. 269; 42 Sol. Jo. 326, D. C.

Annotations:—*Folld. R. v. Bowman*, [1898] 1 Q. B. 663; *R. v. Cotham*, [1898] 1 Q. B. 802. *Distd. R. v. Manchester JJ.*, [1899] 1 Q. B. 571. *Consd. R. v. Johnson*, [1905] 2 K. B. 59. *N.F. R. v. Woodhouse*, [1906] 2 K. B. 501. *Mentd. R. v. Nicholson*, [1899] 2 Q. B. 455; *R. v. Butt, Ex p. Brooke* (1922), 38 T. L. R. 537.

2730. — ————*R. v. BOWMAN*, [1898] 1 Q. B. 663; 67 L. J. Q. B. 463; 78 L. T. 230; 62 J. P. 374, D. C.

Annotations:—*Reid. R. v. Pilkington, etc., Lancashire JJ. & Wallace, Ex p. Williams* (1898), 62 J. P. 435; *R. v. Johnson* (1905), 74 L. J. K. B. 585; *R. v. Woodhouse, etc., Leeds JJ.* (1906), 75 L. J. K. B. 745. *Mentd. R. v. Cotham*, [1898] 1 Q. B. 802; *R. v. Nicholson*, [1899] 2 Q. B. 455; *Stephens v. Brentford Licensing JJ.* (1901), 65 J. P. 345; *R. v. Dodds*, [1905] 2 K. B. 40; *R. v. Drinkwater*, [1905] 2 K. B. 469; *Southwark Corp. v. Partington Advertising Co.* (1905), 69 J. P. 183; *R. v. Shaun*, [1910] 2 K. B. 418; *R. v. L. C. C., Ex p. London & Provincial Electric Theatres*, [1915] 2 K. B. 466; *R. v. Brighton Corp.*, *Ex p. Tilling* (1916), 85 L. J. K. B. 1552; *R. v. Port of London Authority, Ex p. Kynoch*, [1919] 1 K. B. 176.

2731. — ————*R. v. COTHAM*, [1898] 1 Q. B. 802; 67 L. J. Q. B. 632; 46 W. R. 512; 14 T. L. R. 367; 42 Sol. Jo. 470; *sub nom. R. v. PILKINGTON, ETC. JJ. & WALLACE, Ex p. WILLIAMS, R. v. COTHAM, ETC. JJ. & WEBB, Ex p. WILLIAMS*, 78 L. T. 468; 62 J. P. 435, D. C.

Annotations:—*Consd. R. v. Woodhouse*, [1906] 2 K. B. 501. *Mentd. R. v. Manchester JJ.*, [1899] 1 Q. B. 571; *R. v. Nicholson*, [1899] 2 Q. B. 455; *Mackrell v. Brentford JJ.*, [1900] 2 Q. B. 387; *R. v. Dodds*, [1905] 2 K. B. 40; *Wilson v. Crewe JJ.*, [1905] 1 K. B. 491; *R. v. Manchester Corp.*, [1911] 1 K. B. 560; *R. v. Monmouthshire JJ.*, *Ex p. Nevill* (1913), 109 L. T. 788; *R. v. Port of London Authority, Ex p. Kynoch*, [1919] 1 K. B. 176.

2732. — ————*An order of justices under Licensing Act, 1872 (c. 94), s. 26, extending the hours during which a licensed house may be kept*

MUNICIPALITY, BOARD OF LICENCE COMRS. (1913), 18 B. C. R. 648.—CAN.

h. — *Determination of local government board of salary of an officer under the Act.*—Where under Local Government (Ir.) Act, 1898, Sect. 115 (18), the local govt. board determines the salary to be paid to an officer

under the Act:—*Held*: such determination is a judicial act, & is subject to be brought up on *certiorari*.—*R. v. LOCAL GOVERNMENT BOARD, WILSON'S CASE* (1900), 34 I. L. T. 196.—IR.

k. — ————*R. v. LOCAL GOVERNMENT BOARD, WEBSTER'S CASE, SAME v. SAME, LEARY'S CASE*, [1902]

2 I. R. 349; 35 I. L. T. 87.—IR.

l. — *Disallowance of objection to assessment by local rating body.*—*STEVENS v. CHRISTCHURCH DRAINAGE BOARD* (1883), 2 N. Z. L. R. 262.—N.Z.

m. *Order of commissioner discharging debtor from custody.*—When

open for the sale of intoxicating liquors is a judicial order, & may be brought up on *certiorari*.

If there is an erroneous decision of the justices either in fact or in law *certiorari* does not lie. If there is an erroneous assumption of jurisdiction in point of law based upon evidence which is not evidence of any matter which may be tried before them *certiorari* will go (LORD ALVERSTONE, C.J.).—*R. v. JOHNSON*, [1905] 2 K. B. 59; 74 L. J. K. B. 585; 92 L. T. 654; 69 J. P. 236; 53 W. R. 655; 21 T. L. R. 423; 49 Sol. Jo. 460, D. C.

2733. — Referring application to quarter sessions.]—*R. v. WOODHOUSE*, No. 2421, *ante*.

2734. — Order of confirming authority—Under Licensing Act, 1872 (c. 94).—(1) When a person applies for a certificate that he is the real resident holder & occupier, as defined in Beerhouse Act, 1840 (c. 61), s. 1, of the premises in respect of which he desires to be licensed, the justices have no jurisdiction to grant the certificate unless appct. can prove that he sleeps on the premises.

(2) The confirming authority, whose confirmation is required for certain classes of licences, constitute a ct., & consequently a writ of *certiorari* will lie if they have confirmed the grant of a licence to a person not legally qualified or otherwise granted without jurisdiction.—*R. v. MANCHESTER JJ.*, [1899] 1 Q. B. 571; 68 L. J. Q. B. 358; 80 L. T. 531; 63 J. P. 360; 47 W. R. 410; 15 T. L. R. 201; 43 Sol. Jo. 278, D. C.

Annotations.—As to (1) *Consd. R. v. Woodhouse*, [1906] 2 K. B. 501. As to (2) *Apprvd. R. v. Sunderland JJ.*, [1901] 2 K. B. 357. *Consd. R. v. Woodhouse*, [1906] 2 K. B. 501. *Reid. R. v. Johnson*, [1905] 2 K. B. 59. *Generally, Mentd. Nix & Beeston Brewery Co. v. Nottingham JJ.* (1899), 47 W. R. 628.

2735. — — — — —.]—A writ of *certiorari* will lie to bring up an order of justices acting as the confirming authority under Licensing Act, 1872 (c. 94).—*R. v. SUNDERLAND JJ.*, [1901] 2 K. B. 357; 70 L. J. K. B. 946; 85 L. T. 183; 65 J. P. 598; 17 T. L. R. 551; 45 Sol. Jo. 575, C. A. Annotations.—*Consd. R. v. Tompest* (1902), 86 L. T. 585. *Reid. R. v. Johnson*, [1905] 2 K. B. 59; *R. v. Woodhouse*, [1906] 2 K. B. 501.

See, further, INTOXICATING LIQUORS.

2736. — Warrant of commitment by justices—Jurisdiction to issue dependent on non-payment of money.]—A warrant of commitment issued by justices is a judicial act, where, upon the face of the conviction, it appears that the jurisdiction to issue it depends upon the non-payment by deft. of a sum of money by a certain date.

A sum of money was, by the terms of a conviction, ordered to be paid by deft. by a certain date, & such sum was duly paid, but the justices, in ignorance of that fact, issued a warrant of distress & subsequently a warrant of commitment:—*Held*: a writ of *certiorari* should issue to bring up & quash the warrant of commitment.—*R. v. DOHERTY, Ex p. ISAACS* (1910), 74 J. P. 304; 26 T. L. R. 502, D. C.

2737. Proceedings of jurisdiction newly created by statute.]—*BALL v. PATTRIDGE* (1666), 1 Sid. 296; 82 E. R. 1116.

2738. —.]—CARDIFFE BRIDGE CASE, No. 2458, *ante*.

2739. —.]—GRENVILLE v. COLLEGE OF PHYSICIANS, No. 2440, *ante*.

2740. Proceedings under penal statute—Unless expressly taken away.]—A *certiorari* always lies

to remove proceedings under penal statutes unless it is expressly taken away.—*R. v. CASHIOBURY HUNDRED JJ.* (1823), 3 Dow. & Ry. K. B. 35; 1 Dow. & Ry. M. C. 485.

Annotation.—*Reid. R. v. Wilson* (1834), 1 Ad. & El. 627.

2741. Proceedings void ab initio.]—A railway Act directed that compensation for lands taken by the co. in certain cases should be assessed by a special jury, that the deviation from the line of railway mentioned in the Act should not exceed a specified distance, & that no proceedings taken in pursuance of the Act should be removed by *certiorari*. A *certiorari* was applied for to remove an inquisition, on affidavits that the jury appeared by the inquisition not to be special, though the case was one in which a special jury was requisite; & that there had been a deviation greater than the Act allowed:—*Held*: the writ would be refused, because, if the proceedings were in pursuance of the Act, the *certiorari* was taken away, & if not in pursuance of the Act they were merely void.

Here there was substantially jurisdiction, though it may have been exceeded in some respects, & we must look on the clause taking away the *certiorari* as a provision intended to oust the jurisdiction of the ct. & leave parties to their remedy by action. If we were to hold that every trifling excess of jurisdiction prevented the operation of that clause, we should virtually repeal it (LORD DENMAN, C.J.).—*R. v. BRISTOL & EXETER RY. CO.* (1838), 11 Ad. & El. 202, n.; 2 Ry. & Can. Cas. 99; 1 Per. & Dav. 170, n.; 1 Will. Woll. & II. 655; 113 E. R. 391.

Annotations.—*Consd. R. v. Sheffield, etc. Ry.* (1839), 11 Ad. & El. 194.

2742. —.]—Where a coroner's clerk held an inquisition in the name of the coroner, which was in many respects invalid, & seven months later a *certiorari* was applied for to quash it for irregularity:—*Held*: the writ would be refused, & a *melius inquirendum* was unnecessary, as the proceeding was altogether a nullity.—*Re DAWES* (1838), 8 Ad. & El. 936; 1 Per. & Dav. 146; 1 Will. Woll. & H. 684; 112 E. R. 1095.

2743. —.]—*R. v. WALSALL JJ.* (1843), 2 L. T. O. S. 74; 7 J. P. 720.

2744. —.]—*Ex p. GIFFORD* (LORD) (1815), 1 New Sess. Cas. 490; 4 L. T. O. S. 341.

Annotation.—*Reid. R. v. Sevenoaks* (1845), 7 Q. B. 136.

2745. Poor rate—Alternative remedy.]—*R. v. UTOXETER (INHABITANTS)* (1733), Kel. W. 117; 2 Stra. 932; 25 E. R. 522; *previous proceedings* (1731), 1 Barn. K. B. 443.

Annotations.—*Expld. R. v. Shrewsbury JJ.* (1734), Cunn 28. *Mentd. R. v. Sparrow* (1740), 2 Stra. 1123.

2746. — Inconvenience attending removal.]—The true objection against a *certiorari* [to remove rates] is, that if rates were removable, the poor might be starved whilst the rates were depending here, & therefore the ct., from the great inconvenience that would attend the removal of the rates, have refused to do it, & no instance can be produced that such a *certiorari* ever stood (LORD HARDWICKE, C.J.).—*R. v. SALOP TOWN JJ.* (1733), Sess. Cas. K. B. 73; 93 E. R. 74; *sub nom. R. v. SHREWSBURY JJ.*, Cunn. 28; 2 Stra. 975.

2747. Appointment of constables—By justices at petty sessions.]—*Re HIPPERHOLME OUM BRIGHOUSE (CONSTABLES)*, No. 2760, *post*.

debtor, who was being examined before a comr., on an application for his discharge from custody, refused to answer proper questions put to him, & the comr. ordered his discharge, the ct. granted a *certiorari* to remove the order.—*Ex p. WRIGHT* (1881), 20 N. B. R. 509.—CAN.

n. Errors in statutory conditions precedent to grant of water record.—Under Land Act, 1865.]—Under above Act, errors in the statutory conditions precedent to the grant of a water record should be raised by *certiorari*.—*CARSON v. MASTLEY* (1886), 1 B. C. R., Pt. II., 281.—CAN.

o. Decision of board of licence commissioners.]—*Held*: *certiorari* proceedings are the proper proceedings by which to question a decision of a board of licence comrs.—*FREEMAN v. NEW WESTMINSTER LICENCE COMRS.* (1914), 29 W. L. R. 892; 7 W. W. R. 963.—CAN.

Sect. 6.—Purposes of the writ: Sub-sect. 2, A. & B. (a).]

2748. Assessment of land tax.]—The ct. will not grant a *certiorari* to remove the assessment of the land tax.—*R. v. KING* (1788), 2 Term Rep. 234; 100 E. R. 127.

Annotations:—*Consd. R. v. Woodhouse*, [1906] 2 K. B. 501. *Mentd. Morthner v. McCallan* (1840), 6 M. & W. 58.

2749. Articles of the peace—& order to find security made thereupon.]—(1) Where articles of the peace were returned into ct. by *certiorari*, with two affidavits annexed to them, on the same parchment, & a statement at the bottom that the matters contained therein were sworn by the several parties above-named:—*Held*: it sufficiently appeared that the articles were exhibited upon oath.

(2) When a prisoner has been imprisoned in default of recognisances to keep the peace, & has obtained a *habeas corpus* to which the warrant of commitment is returned, the order itself together with the articles of the peace, may be brought before the ct. by *certiorari*, & if, in the opinion of the ct., the articles do not show any threat or evidence warranting the justice or quarter sessions in making the order, the ct. will order the prisoner to be discharged.—*R. v. DUNN* (1840), 12 Ad. & El. 599; *Arn. & H.* 21; 4 Per. & Dav. 415; 4 J. P. 728; 113 E. R. 939; *sub nom. Re DUNN*, 10 L. J. M. C. 29; 5 Jur. 721.

Annotations:—*As to* (1) *Reid. Lort v. Hutton* (1876), 45 L. J. M. C. 95. *Generally, Mentd. Ex p. Gifford* (1845), 1 New Sess. Cas. 490; *R. v. Mallinson* (1851), 16 Q. B. 367.

2750. Order of Commissioners of Sewers—For removal of clerk.]—A *certiorari* to bring up an order made by the comrs., for the removal of their own clerk, is of common right, & not discretionary, as in the case of other orders, where great inconveniences may follow by inundations in the meantime.—*YORKSHIRE SEWERS COMRS. CASE* (1724), 1 Stra. 609; 93 E. R. 731; *sub nom. ARTHUR v. YORKSHIRE SEWERS COMRS.*, 8 Mod. Rep. 331; *sub nom. R. v. BANKS & ARTHUR*, Fortes. Rep. 374. *Annotation:—Reid. R. v. Surrey JJ.* (1870), L. R. 5 Q. B. 466.

2751. — Directing contribution towards money expended.]—*PORTLAND (DUCHESS) v. WYNNE* (1740), 7 Mod. Rep. 385; 87 E. R. 1308.

2752. —]—Injunction against the act of Comrs. of Sewers, reducing the height of water in a river, dissolved, there being a much shorter remedy by *certiorari* in the Ct. of K. B.; who interfere with great caution.—*KERILSON v. SPARROW* (1815), 19 Ves. 449; *Coop. G.* 305; 34 E. R. 583, L. C.

Annotation:—Mentd. A.-G. v. Forbes (1836), 2 My. & Cr. 123.

2753. Presentment of Commissioners of Sewers—To try right to make order.]—A *certiorari* was granted to bring up a presentment of the Comrs. of Sewers for W., upon which J. was fined £3,000, the object being to try the right of the Comrs. to make the order they did on the presentment.—*Ex p. JENKINS* (1846), 8 L. T. O. S. 124; 10 J. P. Jo. 740.

2754. Order of Tithe Commissioners—Discretion of court to grant—Application under Tithe Act, 1837 (c. 69).]—Sect. 3 of the above Act which enacts, that any person interested in the judgment or determination of the comrs. respecting boundaries, who shall be dissatisfied with such determination, may move the Ct. of Q. B. to remove the judgment by *certiorari*, does not entitle the party to a *certiorari* as a matter of right, but leaves the granting of it as a matter of discretion to the ct.—*R. v. MERSON* (1842), 3 Q. B. 895; 3 Gal. &

Dav. 367; 12 L. J. Q. B. 7; 7 J. P. 38; 6 Jur. 1061; 114 E. R. 752.

Annotation:—Reid. R. v. Kelcey (1850), 1 L. M. & P. 499.

2755. Order of sessions—Not refusal to grant certificate—To receive back duty on goods destroyed.]—*MAYO & PARSONS CASE* (1720), 1 Stra. 391; 93 E. R. 586.

2756. — Estreating recognisance.]—Where the sessions made an order to estreat a recognisance, where they had no power so to do, the ct. granted a *certiorari* to remove it, that it might be quashed, though the order was void.—*R. v. WEST RIDING JJ., Re THORNTON* (1837), 7 Ad. & El. 583; 2 Nev. & P. K. B. 457; *Nev. & P. M. C.* 385; 7 L. J. M. C. 9; 112 E. R. 590.

Annotation:—Reid. R. v. Ely JJ. (1855), 5 E. & B. 489.

2757. — Not order quashing indictment.]—An order of quarter sessions, brought up by *certiorari* appeared to be an order quashing an indictment containing counts for forcible entries, assaults, & a riot. On motion to quash the order:—*Held*: (1) the sessions, having jurisdiction over the subject-matter of the indictment, had jurisdiction to quash it; (2) this ct. would not inquire, on this proceeding, whether the indictment was properly quashed, but the proper way of raising such a question was on writ of error.—*R. v. WILSON* (1844), 6 Q. B. 620; 1 New Mag. Cas. 163; 1 New Sess. Cas. 427; 14 L. J. M. C. 3; 4 L. T. O. S. 153; 9 J. P. 167; 115 E. R. 233; *sub nom. R. v. GLOUCESTERSHIRE JJ.*, *R. v. WILSON*, 8 Jur. 1069.

2758. Motor Car Act, 1903 (c. 36), s. 4—Indorsement of licence under.]—*R. v. MARSHAM, Ex p. CHAMBERLAIN*, [1907] 2 K. B. 638; 76 L. J. K. B. 1036; 97 L. T. 396; 71 J. P. 445; 23 T. L. R. 629; 51 Sol. Jo. 592; 21 Cox, C. C. 510; 5 L. G. R. 998, D. C.

Annotation:—Mentd. R. v. Plowden, [1909] 2 K. B. 269.

2759. — Conviction for non-production of licence.]—*R. v. BEAVER, ETC. JJ., Ex p. SHACKLETON* (1910), 74 J. P. 127; 8 L. G. R. 163, D. C.

Annotation:—Mentd. Brown v. Crossley (1911), 75 J. P. 177.

See, further, STREET & AERIAL TRAFFIC.
2760. Resolution of vestry—For appointment of constable.]—(1) A *certiorari* does not lie to the chairman of a vestry to bring up a resolution of the vestry for the appointment of a constable under Parish Constables Act, 1842 (c. 109).

(2) But it will lie to bring up the appointment itself made by the justices in petty sessions where the proceedings in vestry have not been conducted in conformity to Vestries Act, 1818 (c. 69), amended by Vestries Act, 1819 (c. 85), a poll having been demanded & refused, & the resolution being carried by a show of hands.—*Re HIPPERHOLME CUM BRIGHOUSE (CONSTABLES)* (1847), 5 Dow. & L. 79; 2 Saund. & C. 98; 11 J. P. Jo. 438; *sub nom. R. v. WEST RIDING OF YORKSHIRE JJ.*, 11 Jur. 713.

Annotations:—*As to* (1) & (2) *Reid. R. v. Woodhouse*, [1906] 2 K. B. 501. *Generally, Mentd. R. v. Nicholson, R. v. Greenhalgh, Ex p. Bamber* (1899), 81 L. T. 257.

2761. Proceedings of court leet—Not where fine estreated to Court of Duchy Chamber of Lancaster.]—The Ct. of K. B. will not grant a *certiorari* to remove the record & proceedings out of a ct. leet, in order to inquire into the propriety of an amercement, where the fine has been estreated into the Duchy Chamber of Lancaster, & paid.—*R. v. HEATON* (1787), 2 Term Rep. 184; 100 E. R. 99.

2762. Sentence of court-martial—Only affecting military status of applicant.]—*Ex p. ROBERTS* (1879), *Times*, June 11.

See, further, ROYAL FORCES.

Bastardy orders.]—*See BASTARDY*, Vol. III. pp. 406, 407, Nos. 400–405.

Coroner's inquisition.—See CORONERS, Vol. XIII., pp. 251, 252, 253, 254, 255, Nos. 275, 277, 298-301, 305-308, 321-330.

Inquisition under Lands Clauses Act, 1845 (c. 18), & other Acts.—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., pp. 209, 210, Nos. 902-927.

Orders of county council.—Under LOCAL GOVERNMENT ACT, 1888 (c. 41), s. 80.]—See LOCAL GOVERNMENT.

Orders for payment out of borough or county funds.—See CORPORATIONS, Vol. XIII., pp. 363, 364, Nos. 975-980; LOCAL GOVERNMENT.

Order of Home Secretary.—Under ALIENS RESTRICTION ACT, 1914 (c. 12).—See ALIENS, Vol. II., p. 196, No. 552.

Orders & allowances of Local Government auditors.—Under EDUCATION ACTS.]—See EDUCATION; LOCAL GOVERNMENT; METROPOLIS.

—Under LOCAL GOVERNMENT ACTS.]—See LOCAL GOVERNMENT.

—Under LONDON GOVERNMENT ACT, 1899 (c. 14), s. 14.]—See METROPOLIS.

—Under LUNACY ACT, 1890 (c. 5), s. 279.]—See LOCAL GOVERNMENT.

—Under POOR LAW AMENDMENT ACT, 1844 (c. 101), s. 35.]—See POOR LAW.

—Under PUBLIC HEALTH ACT, 1875 (c. 55), s. 247.]—See LOCAL GOVERNMENT.

Orders of licensing justices & confirming authorities.—See INTOXICATING LIQUORS.

Orders of Local Government Board.—See LOCAL GOVERNMENT.

Orders under lunacy statutes.—See LUNATICS & PERSONS OF UNSOUND MIND.

Orders for removal of paupers.—See POOR LAW.

Warrants of commitment & orders of justices.—See MAGISTRATES.

B. Grounds for granting or refusing.

(a) Where no Excess or Want of Jurisdiction.

2763. General rule.—Upon an appeal against an order of removal, the justices at sessions were equally divided, & made an order, that the hearing of the appeal should be adjourned. One of the justices, who voted in favour of resp. parish, was a rated inhabitant of that parish. On an application for a *certiorari* to remove the order of sessions, in order that it & the original order of removal might be quashed:—*Held*: a *certiorari* must be refused, on the ground that, even if the order of sessions were erroneous, the ct. had no jurisdiction to review it.—R. v. MONMOUTHSHIRE JJ. (1828), 8 B. & C. 137; 6 L. J. O. S. M. C. 87; 108 E. R. 994.

Annotation:—*Mentd.* Colam v. Manfield (1872), 26 L. T. 661.

2764. —.]—If the ct. of quarter sessions form an erroneous opinion upon a matter over which they have jurisdiction, this ct. will not interfere with their decision.

Where a notice of appeal against an order of removal was at first held to be bad at the sessions, but the ct. afterwards looked at the order & quashed it, upon the ground that it was directed to a parish, instead of a tithing within the parish, a *certiorari* to bring up the order of sessions to be quashed, was refused, although it was shown by affidavit that the order was properly directed.—R. v. CHESHIRE JJ. (1838), 8 Ad. & El. 398; 1 Per. & Dav. 88; 1 Will. Woll. & H. 635; 8

L. J. M. C. 1; 2 J. P. 741; 2 Jur. 964; 112 E. R. 889.

Annotations:—*Refd.* Colam v. Manfield (1872), 26 L. T. 661; R. v. Nat Bell Liquors, [1922] 2 A. C. 128. *Mentd.* R. v. Carnarvonshire JJ. (1841), 5 J. P. 798; R. v. Lancashire JJ. (1857), 30 L. T. O. S. 149; R. v. Derbyshire JJ., *Ex p.* New Mills U. D. C. (1909), 100 L. T. 453.

2765. —.]—The ct. of quarter sessions has the power of quashing an indictment for forcible entry, riot, & assault, before plea pleaded. Where, therefore, jurisdiction appears, this ct. will not review their judgment in such case, upon its being brought before them by *certiorari*, the proper mode of proceeding being by writ of error.—R. v. WILSON (1844), 6 Q. B. 620; 1 New Mag. Cas. 163; 1 New Sess. Cas. 427; 14 L. J. M. C. 3; 4 L. T. O. S. 153; 9 J. P. 167; 115 E. R. 233; *sub nom.* R. v. GLOUCESTERSHIRE JJ., R. v. WILSON, 8 Jur. 1069.

2766. —.]—The decision of a tribunal, lawfully constituted, upon a question properly brought before it, respecting a matter within its jurisdiction, is not open to review on *certiorari*, but the proceedings of persons assuming to be a tribunal, that they are lawfully constituted, is open to review.—R. v. GRANT, No. 2826, *post*.

2767. — *Misconduct.*—R. v. GLAMORGANSHIRE JJ. (1889), 5 T. L. R. 636; 53 J. P. Jo. 435, D. C.

Annotation:—*Mentd.* R. v. Byrde, etc. JJ. (1892), 36 Sol. Jo. 257.

2768. —.]—If Comrs. of Income Tax purporting to act under Customs & Inland Revenue Act, 1890 (c. 8), s. 23, consider a wrong question altogether, then their decision can be dealt with by a writ of *certiorari*, but if they consider the right question the ct. cannot interfere by *certiorari*, even although they may have acted erroneously.

TAX COMRS., *Ex p.* INLAND REVENUE COMRS. (1904), 91 L. T. 94, D. C.

2769. —.]—If there is an erroneous decision of the justices either in fact or in law *certiorari* does not lie (LORD ALVERSTONE, C.J.).—R. v. JOHNSON, No. 2732, *ante*.

2770. —.]—The renewal of the licence of a public house was refused in June, 1911, subject to compensation, & the lessees of the premises, who were brewers, claimed to be entitled to a share in the compensation money. Their lease was for fourteen years from Michaelmas, 1904, & it contained a proviso that if the renewal of the licence was refused the lease should cease & determine on Sept. 29 next after such refusal, & the lease therefore came to an end on Sept. 29, 1911, seven years before its ordinary expiration. It having been determined by the High Ct. that the lessees were entitled to be treated as persons interested in the premises, the compensation authority in dividing the agreed compensation money of £670, gave £570 to the owner, £90 to the licensee, & £10 to the lessees. The lessees having complained that they had not been awarded any compensation in respect of the seven years after Michaelmas, 1911, which alone they claimed, obtained a rule for *certiorari*:—*Held*: as the order made by the compensation authority was good on the face of it there was no ground for granting the writ.—R. v. CHESHIRE JJ., *Ex p.* HEAVER (1912), 108 L. T. 374; 77 J. P. 33; 29 T. L. R. 23, D. C.

2771. —.]—On an appeal to quarter sessions against a county rate made by a county council, questions as to the date at which the grievance complained of arose, & whether the rate appealed

PART IX. SECT. 6, SUB-SECT. 2.—
B. (a).

p. Wrong decision in matter of law—Not ground for granting.]—
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HOLMES v. REEVE (1869), 5 P. R. 58.—
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q. — Rejecting evidence—May be ground for granting.]—*Re* BELL, *Re*

BELL, *Ex p.* VICTORIA MARINE BOARD (1892), 18 V. L. R. 55, 432.—AUS.

r. — Not ground for granting.]—Improper refusal of a

6.—*Purposes of the writ: Sub-sect. 2, B. (a).]*

against was, in fact, one rate or two rates, are, either as questions of fact or law, for the determination of quarter sessions alone, & the ct. will not by writ of *certiorari* overrule their decision.—*R. v. CARNARVONSHIRE JJ., Ex p. CARNARVON COUNTY COUNCIL*, [1918] 1 K. B. 280; 87 L. J. K. B. 887; 119 L. T. 486; 82 J. P. 93; 16 L. G. R. 114, C.

2772. Objection to merits.]—A *certiorari* will not lie to remove a conviction by the Comrs. of Excise for the double duties on beer.

We are of opinion that, in this case, a *certiorari* does not lie. But if it did, it must be granted upon cause shown &, as the affidavits in support of the present application do not proceed upon any alleged want of jurisdiction, but contain objections to the conviction on the merits, the ct. would not grant the *certiorari*, if they had power to do it, for those objections are, more properly, the subject-matter of an appeal, & deft. has not chosen to resort to that remedy (LORD MANSFIELD, C.J.).—*R. v. WHITBREAD* (1780), 2 Doug. K. B. 549; 99 E. R. 347.

Annotation:—Distd. R. v. Abbot (1783), 2 Doug. K. B. 553, n.

2773. —.]—*R. v. ABBOT* (1783), 2 Doug. K. B. 553, n.; 99 E. R. 349, n.

Annotations:—Mentd. R. v. Eaton (1787), 2 Term Rep. 89; *R. v. Chandler* (1811), 14 East, 267; *R. v. Winsor* (1866), 14 L. T. 195.

2774. — Order *prima facie* valid.]—The Ct. of K. B. will not, upon removal of an order of sessions allowing overseers' accounts, which is good upon the face of it, go into the merits of those accounts upon affidavit.—*R. v. JAMES* (1814), 2 M. & S. 321; 105 E. R. 401.

2775. —.]—When an order of justices is brought up by *certiorari* to be quashed, if it appears that the justices had jurisdiction & the proceedings are regular on the face of them, the ct. will not interfere even though the decision on the merits was unwise or unjust.

Where the charge laid before the magistrate, as stated in the information, does not amount in law to the offence over which the statute gives him jurisdiction, his finding the party guilty by his conviction in the very terms of the statute would not avail to give him jurisdiction; the conviction would be bad on the face of the proceedings, all being returned before us (LORD DENMAN, C.J.).—*R. v. BOLTON* (1841), 1 Q. B. 66; Arn. & H. 261; 4 Per. & Dav. 679; 10 L. J. M. C. 49; 5 J. P. 370; 5 Jur. 1154; 113 E. R. 1054.

Annotations:—Consd. R. v. Buckinghamshire JJ. (1843), 3 Q. B. 800. *Distd. R. v. Grant* (1849), 14 Q. B. 43. *Consd. R. v. Buchanan* (1851), 15 J. P. Jo. 783. *Appld. R. v. Rose* (1855), 24 L. J. M. C. 130; *R. v. Dickenson* (1857), 21 J. P. Jo. 389; *R. v. Nunneley* (1858), E. B. & E. 852; *Ex p. Vaughan* (1866), L. R. 2 Q. B. 114. *Folld. R. v. Allen*, (1866), 7 B. & S. 902. *Appld. Colonial Bank of Australasia v. Willan* (1874), L. R. 5 P. C. 417. *Consd. Ex p. Wake* (1883), 11 Q. B. D. 291. *Appld. R. v. Nat Bell Liquors*, [1922] 2 A. C. 128. *Reid. R. v. Badger* (1856), 6 E. & B. 137; *R. v. Metropolitan Board of Works* (1857), 27 L. J. Q. B. 5; *R. v. St. Olaves, Southwark Board of Works* (1857), 8 E. & B. 529; *R. v. Colam* (1872), 36 J. P. 660; *R. v. Whitfield* (1885), 15 Q. B. D. 122; *R. v. Central Criminal Court JJ.* (1886), 55 L. J. M. C. 183; *R. v. Farmer*, [1892] 1 Q. B. 637; *R. v. Woodhouse*, [1906] 2 K. P. 501; *R. v. Carson Roberts*, [1907] 2 K. B. 878. *Mentd. R. v. Higgins* (1843), 17 L. J. Q. B. 63, n.; *Allen v. Sharp* (1848), 2 Exch. 352; *Re Chabot* (1848), 17 L. J. K. B. 336; *Fearon v. Norval* (1848), Cox, M. & H. 127; *Thompson v. Ingham* (1850), 14 Q. B. 710; *Newbould v. Colman* (1851), 6 Exch. 189; *Messon v. Alcard* (1852), 22 L. J. Ex. 45; *Ex p. Geswood* (1853), 17 Jur. 1163; *R. v. Simmonds* (1859), 8 Cox, C. C. 190; *Re*

Thompson (1860), 6 H. & N. 193; *London Cor.* (1867), L. R. 2 H. L. 239; *Osgood v. Nelson* (1869), 10 B. & S. 119; *Buccleuch v. Metropolitan Board of Works* (1870), L. R. 5 Exch. 221; *Revell v. Blake* (1872), L. R. 7 C. P. 300; *Ex p. Huguet* (1873), 29 L. T. 41; *Loveay v. Stallard* (1874), 30 L. T. 792; *Usill v. Hales, Usill v. Brearley, Usill v. Clarke* (1878), 8 O. P. D. 319; *R. v. Brakenridge* (1884), 48 J. P. 293; *Huxley v. West London Extension Ry.*, *Hughes v. Merrett, Wood v. Madge* (1886), 17 Q. B. D. 373; *Ex p. Anthers* (1889), 58 L. J. M. C. 62; *Bache v. Billingham* (1893), 63 L. J. M. C. 1; *R. v. Clerkenwell General Taxes Comrs.*, [1901] 2 K. B. 879; *Livingstone v. Westminster Corp.*, [1904] 2 K. B. 109; *R. v. Johnson, etc.* JJ. (1905), 69 J. P. 236; *R. v. Bloomsbury Income Tax Comrs.*, [1916] 3 K. B. 768; *Re Wilson*, [1916] 1 K. B. 382; *R. v. Morn Hill Camp, Ex p. Ferguson*, [1917] 1 K. B. 176.

2776. —.]—*R. v. DORSETSHIRE JJ.* (1844), 2 L. T. O. S. 352.

2777. —.]—*R. v. BUCHANAN* (1851), 15 J. P. Jo. 783.

2778. —.]—Special constables having been appointed under Special Constables Act, 1831 (c. 41), the justices at a petty session, after the ordinary business had been concluded, continued the sitting for the purpose of auditing the accounts of their expenses, & made an order in writing directing the county treasurer to pay the amount. The order was a mere direction to pay the money signed by three justices; but it did not show upon its face that the requisites of the statute had been complied with. The treasurer acted upon the order & the payment was allowed when his accounts were passed by quarter sessions:—*Held*: the order was not valid, not having been made at a special session held for the purpose, but as it was not invalid upon its face, & had been acted upon & the payment allowed, the ct. ought not, in the exercise of its discretion, to grant a *certiorari* to bring it up.—*R. v. NEWBOROUGH* (1869), L. R. 4 Q. B. 585; 10 B. & S. 586; 38 L. J. M. C. 129; 17 W. R. 861; *sub nom. R. v. CARNARVONSHIRE JJ.*, 20 L. T. 818.

Annotations:—Mentd. R. v. Surrey JJ. (1870), L. R. 5 Q. B. 466; *R. v. Johnson, Ex p. Thornely* (1905), 92 L. T. 654.

2779. —.]—*COLAM v. MANFIELD* (1872), 26 L. T. 661; *sub nom. R. v. COLAM*, 36 J. P. 660; 20 W. R. 331.

2780. —.]—Summonses were issued against two officers of local branches of a certain trade union under Trade Union Act, 1871 (c. 31), s. 12, charging them with wilfully withholding certain sums of money belonging to the union. Both defts. admitted the charges against them, & orders, headed "Civil debt," were made upon them for payment of the amounts due or in default distress & sale. Both defts. defaulted, & application was then made for their committal to prison under the sect. The magistrate refused the application on the ground that the sect. was modified by Summary Jurisdiction Act, 1879 (c. 49), s. 6, & that, the proceedings being civil & not criminal, in order to obtain committal a judgment summons must be issued & the prosecution must prove possession of means by defts. An order nisi was then obtained, addressed to the magistrate & defts., calling on them to show cause why the orders should not be removed & quashed on the ground that the money ordered to be paid was not a civil debt:—*Held*: as the orders were regular on the face the rule must be discharged.—*R. v. TRUSCOTT* (1899), 81 L. T. 188; 15 T. L. R. 405; 19 Cox, C. C. 379, D. C.

2781. — Exercise of discretion.]—*R. v. TREGARTHEN* (1893), 5 B. & Ad. 678; 2 Nev. &

judge, to have a person present in ct. sworn as a witness, is not ground for granting a *certiorari*.—*Ex p. MC-DONALD* (1888), 27 N. B. R. 169.—**CAN.**

s. —.]—*R. v. MC-DONALD* (1896), 29 N. S. R. 33.—**CAN.**
t. —.]—*R. v. STEVENS* (1898), 31 N. S. R. 124.

—**CAN.**
u. —.]—*Re SHELLY* (1913), 24 W. L. R. 285; 4 W. W. R. 741; 10 D. L. R. 666.—**CAN.**

M. K. B. 379; 1 Nev. & M. M. C. 431; 110 E. R. 941.

Annotations.—*Reid. Re Dunn* (1840), 10 L. J. M. C. 29. *Mentl. Lort v. Hutton* (1876), 45 L. J. M. C. 95.

2782. —[—]—*R. v. POOR LAW COMRS.* (1837), 1 J. P. 168; 1 Jur. 721.

2783. —[—]—A summons to answer a charge of assault was served upon deft.'s wife at his house at nine o'clock in the morning, to appear the next day at eleven o'clock at a place eight miles distant. Deft., who was a collier, had gone to his work in the mine, & did not return till eleven at night. The next morning having left some work unfinished, he went to the mine. The justices proceeded to hear the case in his absence, & adjudged him guilty of an assault, & sentenced him to pay a fine or be imprisoned. On motion for *certiorari* to bring up the conviction for the purpose of being quashed:—*Held*: it was for the justices to decide whether the time was reasonable under the circumstances, & having so decided, the ct. would not review their decision.—*Ex p. WILLIAMS* (1851), 2 L. M. & P. 580; 18 L. T. O. S. 98; 15 J. P. 757; 15 Jur. 1060.

2784. —[—]—Under Vexatious Indictments Act, 1859 (c. 17), it is sufficient if the consent of the judge to the prosecution is given in writing, & no previous summons or notice to the party, or even affidavit of the facts, is necessary.

As to the circumstances under which that direction or consent shall be given, it has left them entirely within the discretion of the judge & the ct. will not interfere with its exercise (COCKBURN, C.J.).—*R. v. BRAY* (1862), 3 B. & S. 255; 1 New Rep. 17; 32 L. J. M. C. 11; 7 L. T. 248; 27 J. P. 165; 11 W. R. 7; 9 Cox, C. C. 215; 122 E. R. 96.

Annotation.—*Reid. R. v. Bradlaugh* (1882), 31 W. R. 229.

2785. —[—]—A *certiorari* will not issue to remove a record of conviction on an indictment good on the face of it, on the ground that the judge has misconceived a question of law.—*R. v. CHRISTIAN* (1842), 12 L. J. M. C. 26.

2786. —[—]—*R. v. CENTRAL CRIMINAL COURT JJ.*, No. 3575, *post*.

2787. —[—]—*Poor Law Amendment Act, 1842* (c. 57), s. 8.—When the Poor Law Board comes to an erroneous decision, in point of law, on a question arising under the above sect. the ct. has power to review the decision upon *certiorari*.—*R. v. POOR LAW COMRS.* (1854), 24 L. T. O. S. 156; 1 Jur. N. S. 251.

2788. Wrong decision on matters of fact.—Upon an application for writ of *certiorari* upon affidavits which satisfied the Ct. that magistrates finding was contrary to the fact:—*Held*: nevertheless magistrates had jurisdiction to entertain the complaint to make order & therefore not entitled to writ of *certiorari*.—*WAKE v. SHEFFIELD CORPN.* (1883), 12 Q. B. D. 142; *sub nom. R. v. SHEFFIELD (RECORDEE)*, 53 L. J. M. C. 1; 50 L. T. 76; 48 J. P. 197; 32 W. R. 82, C. A.; *affg. S. O. sub nom. Ex p. WAKE*, 11 Q. B. D. 291, D. C. *Annotations*.—*Mentl. Over Darwin Corpn. v. Lancaster J.J.* (1884), 53 L. J. M. C. 198; *Eccles v. Wirral R. S. A.* (1886), 17 Q. B. D. 107; *Manchester Corpn. v. Hampson* (1886), 35 W. R. 334; *Mid. Ry. v. Watton* (1886), 17 Q. B. D. 30; *Walthamstow L. B. v. Staines*, [1891] 2 Ch. 606; *Derby Corpn. v. Grudgings*, [1894] 2 Q. B. 496; *West Hartlepool Corpn. v. Robinson* (1897), 75 L. T. 677; *Re Hanwell U. D. C. & Smith* (1904), 68 J. P. 496; *Bristol Corpn. v. Sinnott*, [1913] 1 Ch. 62.

2789. Sufficiency of evidence in court below—

a. —[—]—*Reception of evidence—May be ground for refusal.*—*R. v. McDONALD* (1893), 26 N. S. R. 94.—CAN.

b. *Decision on matters of fact.*—*Certiorari* does not in general lie in respect of a mere question of fact.—

LORD v. TURNER (1870), 2 Han. 13.—CAN.

c. —[—]—*R. v. O'KELL* (1887), 1 Terr. L. R. 79.—CAN.

d. —[—]—*R. v. URQUHART* (1900), 20 C. L. T. 7.—CAN.

Presumptive evidence.—*R. v. BASS*, No. 2486, *ante*.

2790. —[—]—Where power of conviction is by statute given to a magistrate, he is the sole judge of the weight of the evidence given before him; & this ct. will not examine whether or not he has drawn a right conclusion from the evidence, but if no evidence appear on the conviction to support a material part of the information, this ct. will quash the conviction.—*R. v. SMITH* (1800), 8 Term Rep. 588; 101 E. R. 1561.

Annotation.—*Consd. R. v. Nat Bell Liquors*, [1922] 2 A. C. 128.

2791. —[—]—*Indictment prima facie valid.*—The ct. will not grant a *certiorari* to bring up a conviction for the purpose of having it quashed, on the ground that the indictment, which was good on the face of it, was not supported by the evidence.—*R. v. STAFFORDSHIRE JJ.* (1842), 6 J. P. 747.

2792. —[—]—*R. v. NORTH RIDING OF YORKSHIRE JJ., Ex p. PECKHAM* (1844), 3 L. T. O. S. 206; 8 J. P. 663.

2793. —[—]—The ct., upon return of a *certiorari*, will quash a conviction which is valid on the face of it, if it appear from the record to have been founded on insufficient evidence, although such evidence need not have been inserted in the return to the *certiorari*.—*R. v. MCNAUGHTEN* (1845), 1 New Mag. Cas. 402; 6 L. T. O. S. 195.

2794. —[—]—The ct. will not grant a *certiorari* to bring up a conviction by justices in a matter over which they have jurisdiction, even though it be alleged that they convicted without any evidence whatever.—*Re SHROPSHIRE JJ., Ex p. BLEWITT* (1866), 14 L. T. 598.

Annotations.—*Reid. R. v. Glamorganshire JJ.* (1889), 5 T. L. R. 636; *R. v. Nat Bell Liquors*, [1922] 2 A. C. 128.

2795. —[—]—*Non-indictable offence.*—A conviction by a magistrate for a non-indictable offence cannot be quashed on *certiorari* on the ground that the depositions show that there was no evidence to support the conviction, or that the magistrate has misdirected himself in considering the evidence; absence of evidence does not affect the jurisdiction of the magistrate to try the charge.—*R. v. NAT BELL LIQUORS LTD.*, [1922] 2 A. C. 128; 91 L. J. P. C. 146; 127 L. T. 437; 38 T. L. R. 541, P. O.

2796. Misdirection on consideration of evidence —*Non-indictable offence.*—*R. v. NAT BELL LIQUORS LTD.*, No. 2795, *ante*.

2797. Reception of improper evidence.—Applications for renewal of the licences of two beer houses were referred by the licensing justices to the compensation authority on the ground that both licences were not required. The chairman of the compensation authority asked appcts. what offers they were prepared to make in the way of surrendering other licences or contributing to the compensation fund. Each of the appcts. having made a similar offer, to surrender two licences, the chairman invited them to make better offers at an adjourned meeting. One of the appcts. increased his offer, & the other declined to do so and objected to the procedure. The compensation authority renewed the licence of appct. who had increased his offer & refused to renew the other licence subject to payment of compensation. Appct. whose licence was not renewed obtained a rule nisi for a *certiorari* to bring up & quash the order of the compensation authority refusing to

e. —[—]—*R. v. KEENAN* (1913), 28 O. L. R. 441; 4 O. W. N. 1034.—CAN.

f. —[—]—Prosecutor, applied to city sessions for an order to enter a road in the occupation of D., to obtain road materials which could not

Sect. 6.—Purposes of the writ: Sub-sect. 2, B. (a) &

renew the licence upon the ground that the compensation authority had taken into consideration matters which had no bearing upon the merits of the application:—*Held*: (VAUGHAN WILLIAMS, L.J. *diss.*): the rule would be made absolute.—*R. v. SHANN*, [1910] 2 K. B. 418; 79 L. J. K. B. 736; 102 L. T. 700; 74 J. P. 273; 26 T. L. R. 435; 54 Sol. Jo. 474, C. A.

Annotation:—*Mentd.* *R. v. Wandsworth Licensing JJ.*, *Ex p. Whitbread*, [1921] 3 K. B. 487.

2798. Order regulating practice of own court.—Magistrates at quarter sessions have full power to regulate the practice of their own ct.

On an application for a *certiorari* to bring up an order of a ct. of quarter sessions, directing that attorneys should not have audience, when four barristers were present:—*Held*: the rule must be refused.—*Ex p. EVANS* (1846), 9 Q. B. 279; 115 E. R. 1280; *sub nom.* *R. v. DENBIGHSHIRE JJ.*, 1 New Mag. Cas. 547; 2 New Sess. Cas. 422; 15 L. J. Q. B. 335; 7 L. T. O. S. 256; 10 Jur. 542; 10 J. P. Jo. 371.

Annotation:—*Mentd.* *R. v. L. G. Board*, *Ex p. Arldige*, [1914] 1 K. B. 160.

2799. Sufficiency of notice of appeal.—*R. v. CHESHIRE JJ.*, No. 2764, *ante*.

2800.—[On Feb. 26, 1908 an order of removal of a pauper & her child from the W. union to the F. union was made. Both unions are in the county of N. On Mar. 31, 1908 the F. union gave notice of appeal against the order, but the notice did not mention any sessions as those to which it was intended to appeal. On Apr. 8 a ct. of quarter sessions for the county of N. was held, but no appeal against the order of removal was entered for those sessions. The succeeding quarter sessions were held on July 1, 1908, & the appeal against the order was entered for those sessions. The parties treated the notice of appeal as given for those sessions. Upon a rule *nisi* calling upon the justices to show cause why a writ of *certiorari* should not issue directed to them to remove the orders made at the sessions held on July 1:—*Held*: as the parties treated the notice of appeal as having been given for the sessions of July 1, 1908, the objection could not be taken that it applied only to the sessions of Apr. 8, & the rule would be discharged.—*R. v. NORFOLK JJ.*, *Ex p. WAYLAND UNION*, [1909] 1 K. B. 463; 78 L. J. K. B. 236; 99 L. T. 936; 73 J. P. 36; 7 L. G. R. 343, D. C.

Order by competent military authority.—Prohibition from residing in particular locality.—See CONSTITUTIONAL LAW, Vol. XI., p. 552, No. 541.

Orders of licensing justices & confirming authorities.—See INTOXICATING LIQUORS.

Warrants of commitment & orders of justices.—See MAGISTRATES.

Bastardy orders.—See BASTARDY, Vol. III., pp. 406, 407, Nos. 400–405.

(b) *Defect of Jurisdiction from Nature of Case.*

i. *Want or Excess of Jurisdiction as to Subject-Matter.*

Ouster of original jurisdiction.—See Sub-sect. 2, B. (b) *iv.*, *post*.

Want of jurisdiction as ground for issue of writ.—Where certiorari taken away by statute.—See Sect. 7, *post*.

2801 General rule.—An indictment at quarter

conveniently be procured elsewhere. Evidence was given that the field was an orchard. On such evidence prosecutor's application was refused & he

then applied for a *certiorari* to quash the order dismissing the application:—*Held*: *certiorari* should be refused, on the ground that petty sessions had

sessions for perjury at common law, was quashed for want of jurisdiction.—*R. v. BAINTON* (1738), 2 Stra. 1088; 93 E. R. 1050.

Annotation:—*Refd.* *Ex p. Bartlett* (1843), 7 Jur. 649.

2802.—[A *certiorari* can only issue where there is a want of jurisdiction (WRIGHT, J.).—*R. v. LONDON CORPN.*, *Ex p. BOALER*, [1893] 2 Q. B. 146; 63 L. J. M. C. 29; 57 J. P. 633; 42 W. R. 159; 9 T. L. R. 508; 5 R. 554, D. C.

2803.—[If there is an erroneous decision of the justices either in fact or law *certiorari* does not lie. If there is an erroneous assumption of jurisdiction in point of law based upon evidence which is not legal evidence of any matter which may be tried before them *certiorari* will go (LORD ALVERSTONE, C.J.).—*R. v. JOHNSON*, No. 2732, *ante*.

2804. Original order of removal.—Made by quarter sessions.—*R. v. BOND* (1886), 2 Show. 503; 2 Bott's Poor Law, 6th ed. 732; 89 E. R. 1066.

See, further, POOR LAW.

2805. Special sessions allowing surveyor's accounts.—No previous submission to one magistrate.—Under Highways Act, 1773 (c. 78), s. 48.—

(1) In general, appeal lies to the sessions against acts done by magistrates, in pursuance of the above Act, & therefore *certiorari* does not lie.

(2) Where the special sessions allowed a surveyor's accounts, which had not been previously submitted to one magistrate, according to sect. 48:—*Held*: they were not acting in pursuance of the Act, they were acting without jurisdiction, & a *certiorari* would therefore be granted, & their order quashed.—*R. v. SOMERSETSHIRE JJ.* (1826), 5 B. & C. 816; 8 Dow. & Ry. K. B. 733; 4 Dow. & Ry. M. C. 180; 5 L. J. O. S. M. C. 35; 108 E. R. 303.

Annotations:—As to (2) *Refd.* *R. v. Gloucester JJ.* (1827), 6 L. J. O. S. M. C. 21; *R. v. Bristol & Exeter Ry.* (1838), 1 Per. & Dav. 170, n.; *R. v. Sheffield & Manchester Ry.* (1839), 3 Per. & Dav. 111. Generally, *Mentd.* *Re Clarke* (1842), 2 Q. B. 619.

2806. Commitment for not finding sureties.—Insufficiency of articles of peace.—Where the sessions, upon articles of the peace being exhibited have ordered sureties to be found, & committed the accused party for want of them, their judgment is not final, but this ct. on *certiorari*, will examine the articles, & if they are, on the face of them, insufficient supersede the order of sessions as made without jurisdiction & discharge prisoner.—*R. v. DUNN* (1840), 12 Ad. & El. 599; Arn. & H. 21; 4 Per. & Dav. 415; 4 J. P. 728; 113 E. R. 939; *sub nom.* *Re DUNN*, 10 L. J. M. C. 29; 5 Jur. 721.

Annotations:—*Refd.* *Ex p. Gifford* (1845), 1 New Sess. Cas. 490. *Mentd.* *R. v. Mallinson* (1851), 16 Q. B. 367; *Steward v. Gromett* (1859), 7 C. B. N. S. 191; *Lort v. Hutton* (1876), 45 L. J. M. C. 95.

2807. Bastardy order.—Previous order still in force.—*Ex p. HOLLAND* (1848), 12 J. P. Jo. 425.

2808.—Previous application dismissed.—**Second application in different county.**—*R. v. BUCKINGHAMSHIRE JJ.* (1848), 12 J. P. Jo. 486.

See, also, Nos. 2874–2880, *post*; & BASTARDY, Vol. III., pp. 406, 407, Nos. 400–405.

2809. Order under 20 Geo. 2, c. 19.—Appeal taken away by statute.—*R. v. BEDWELL* (1854), 4 E. & B. 213; 24 L. J. M. C. 17; 24 L. T. O. S. 91; 19 J. P. 164; 1 Jur. N. S. 306; 3 W. R. 21; 3 C. L. R. 88; 119 E. R. 82.

2810. Suspension of master's certificate by Wreck Commissioner.—Ship stranded not damaged.—A wreck comr. has no jurisdiction to suspend a

heard the evidence & determined the question of fact.—*R. v. CARLOW JJ.*, [1916] 2 I. R. 313.—*IR.*

certificate in a case where a ship has been stranded but not damaged, & a rule for a *certiorari* to quash the suspension by him of a certificate in such case will be made absolute.—*Ex p. STORY* (1878), 3 Q. B. D. 166; 47 L. J. Q. B. 266; 38 L. T. 29; 26 W. R. 329; 3 Asp. M. L. C. 549

2811. Appointment of gas engineer by quarter sessions—To assist accountant appointed under Gaswork Clauses Act, 1847 (c. 15).—The ct. of quarter sessions has no jurisdiction, under sect. 35 of the above Act, to appoint a gas engineer to assist an accountant appointed thereunder to examine & ascertain the actual state & condition of the concerns of the gas co., & where such order is made, a writ of *certiorari* will lie to bring up the order to be quashed.—*R. v. BRINDLEY* (1885), 54 L. T. 435; 50 J. P. 534; 2 T. L. R. 208, D. C.

2812. Order for payment of costs—Under Highway Act, 1835 (c. 50)—Amended indictment.—Where a prosecution had been ordered by justices under sect. 95 of the above Act, & at the trial the indictment, which was for non-repair of a general highway, was amended so as to limit it to a partial highway, & on the amended indictment a conviction was obtained, & the judge ordered the costs to be paid out of the highway rate of the parish in which the highway was situate:—*Held*: the order was wrong, since sect. 95 only dealt with the costs of such prosecution, i.e., the prosecution ordered by the justices, whereas the amendment had made this a new prosecution, & a *certiorari* would be granted to quash the order.—*R. v. LEE* (1876), 1 Q. B. D. 198; 45 L. J. M. C. 54; 34 L. T. 445; 40 J. P. 551; 24 W. R. 550; 13 Cox, C. C. 199.

2813. — Inquiry under Gasworks Clauses Act, 1847 (c. 15).—A petition was presented in 1885 under sect. 35 of the above Act, to the recorder of H. praying him to appoint a person to inquire into the actual condition of the British Gas Light Co., & an accountant was appointed. He examined into the accounts of the previous year & of all other years since 1871, & drew up a report. It was admitted that the whole of the reserve fund was not then & never had been invested, & that the prescribed maximum dividend had not been paid. The recorder held that the co. earnings had been sufficient to pay the maximum dividend & to have kept invested the whole of the reserve fund, reduced the price of gas 6d. per 1,000 cubic feet, & ordered the co. to pay the expenses of the inquiry & the costs of petitioners. On application for a *certiorari* to quash the order:—*Held*: the order was bad, except as to the direction that the co. should pay the costs of the accountant.—*R. v. HANLEY (RECORDER)* (1887), 19 Q. B. D. 481; 56 L. J. M. C. 125; 57 L. T. 444; 52 J. P. 100; 36 W. R. 222, D. C.

See, further, GAS.

2814. Conviction by Vice-Chancellor of Cambridge University—Charge not showing legal offence.—Rule *nisi* for a writ of *certiorari* on behalf of one H., who had been arrested at Cambridge, & charged before the Vice-Chancellor of the University with "walking with a member of the university." The Vice-Chancellor committed her to the Spinning-house, & the warrant of commitment stated that she had been charged with, & convicted of "walking with a member of the university." It appeared that the above was a common form adopted in the Vice-Chancellor's Ct. when it was intended to charge a woman with walking with such a member "for immoral purposes," & that for a long time it had been taken to mean such a charge, & that it was intended in this case so to charge & convict H., & so to enter

the conviction on the warrant of commitment:—*Held*: plff. had been charged with an offence not within the jurisdiction of the Vice-Chancellor, & the rule would be made absolute.—*Ex p. HOPKINS* (1891), 61 L. J. Q. B. 240; 66 L. T. 53; 56 J. P. 262; 17 Cox, C. C. 444; *sub nom.* *R. v. CAMBRIDGE UNIVERSITY (VICE-CHANCELLOR)*, *Re HOPKINS*, 8 T. L. R. 151, D. C.

Annotation:—*Reid. Bingley v. Quest* (1907), 5 L. G. R. 938.

2815. Conviction by court-martial—For offence already dealt with by commanding officer.—*Ex p. BROWN* (1892), 37 Sol. Jo. 27, D. C.

See ROYAL FORCES.

2816. Order disallowing profit charges of solicitor—Employed by justices on appeal.—Where upon an appeal to the ct. of quarter sessions from the refusal of licensing justices to renew a licence the licensing justices appear, the ct. of quarter sessions has no jurisdiction to compel the licensing justices to employ a particular solr. to act for them, & an order disallowing the profit charges of the solr. actually employed by the licensing justices is bad, & will be quashed by the High Ct. on motion for *certiorari*.—*R. v. WEST RIDING OF YORKSHIRE JJ.*, [1904] 1 K. B. 545; 73 L. J. K. B. 224; 68 J. P. 167; 52 W. R. 540; 20 T. L. R. 211; 48 Sol. Jo. 224, D. C.

2817. Commissioners of Income Tax—Considering wrong question.—If Comrs. of Income Tax purporting to act under Customs & Inland Revenue Act, 1890 (c. 8), consider a wrong question altogether, then their decision can be dealt with by a writ of *certiorari*, but if they consider the right question the ct. cannot interfere by *certiorari*, even although they may have gone wrong in point of fact or of law.—*R. v. CITY OF LONDON INCOME TAX COMRS.*, *Ex p. INLAND REVENUE COMRS.* (1904), 91 L. T. 94, D. C.

See, further, INCOME TAX.

Conviction for offences against game laws.—*See GAME; MAGISTRATES.*

Conviction for offences in connection with use of motor cars.—*See STREET & AERIAL TRAFFIC.*

Order of justices—Compelling delivery of mortgage deeds to member of building society—On refusal by trustees to refer dispute to arbitration.—*See BUILDING SOCIETIES*, Vol. VII., pp. 498, 499, No. 270.

Orders of licensing justices & confirming authorities.—*See INTOXICATING LIQUORS.*

Orders of Local Government Board.—*See LOCAL GOVERNMENT.*

Certiorari to quash inquisitions of compensation jury—On compulsory purchase of land.—*See COMPULSORY PURCHASE OF LAND & COMPENSATION*, Vol. XI., pp. 209, 210, Nos. 902-927.

Order postponing precept to assess compensation.—*See COMPULSORY PURCHASE OF LAND & COMPENSATION*, Vol. XI., p. 207, No. 864.

Inquiry under Merchant Shipping Act—Magistrate proceeding with inquiry—After withdrawal by Board of Trade.—*See ADMIRALTY*, Vol. I., p. 234, No. 1606.

Warrants of commitment & orders of justices.—*See MAGISTRATES.*

ii. Absence of Essential Preliminaries.

2818. Notice—Inquisition under 8 Ann., c. 25.—*R. v. LIVERPOOL CORPN.* (1768), 4 Burr. 2244; 98 E. R. 170.

Annotations:—*Reid. Taylor v. Clemson* (1844), 11 Cl. & Fin. 610. *Mentd. Doe d. Payne v. Bristol & Exeter Ry.* (1840), 6 M. & W. 320.

2819. — Under rule of sessions—Trial of appeal.—An order of removal was served on Aug. 7. Notice & grounds of appeal, dated

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Sept. 6, "for the then next sessions," were served on Oct. 14. The next sessions were held on Oct. 17. By the practice of the sessions eight days' notice of trial of an appeal is required. Neither party attended at the Oct. sessions, & it was stated on affidavit that deponent, resp.'s attorney, was informed & believed that no appeal was then entered. At the Epiphany sessions, in the absence of resps., no further notice of the trial having been given, the order of removal was quashed, with costs:—*Held*: (1) this was a grievance entitling resps. to apply to have the order of sessions quashed, & the sessions had acted without jurisdiction in entertaining the appeal; (2) an affidavit of service of notice of *certiorari* under 13 Geo. 2, c. 18, s. 5, on A. & B., "two of the justices present at the sessions at which the order was made, & who are two of the same justices whose names are mentioned in the heading or caption of the said order," was sufficient as against an applt. parish.—*R. v. SEVENOAKS (INHABITANTS)* (1845), 7 Q. B. 136; 1 New Mag. Cas. 280; 1 New Sess. Cas. 595; 14 L. J. M. C. 92; 5 L. T. O. S. 73; 9 J. P. 485; 9 Jur. 489; 115 E. R. 440.

Annotations:—*As to* (1) *Reid*. *R. v. Peterborough JJ.* (1857), 7 E. & B. 643; *R. v. West Riding JJ.* (1858), E. B. & E. 713; *R. v. Skircoat* (1859), 28 L. J. M. C. 224; *R. v. Sussex JJ.* (1865), 4 B. & S. 966; *Liverpool Gas Co. v. Everton* (1871), L. R. 6 C. P. 414.

2820. — Under Church Building Act, 1819 (c. 134), s. 39.]—By sect. 39 of the above Act, an order of the Church Building Comrs. for stopping paths through a churchyard is to be made with consent of two justices, & on notice being given in the manner & form prescribed by 55 Geo. 3, c. 68, & no appeal lies against the order. By 55 Geo. 3, c. 68, the stopping up was to be by an order of two justices, provided that notice were given in the form annexed, which stated that the order had been signed, but there was an appeal to the sessions, & if no one appealed, or the order was confirmed on appeal, the way was to be stopped, & the proceedings conclusive:—

Held: an order of the comrs., being final when made, must be preceded by notice, & the words, "on notice being given," in sect. 39 of the above Act must, with reference to such an order, be read "after notice given," & where the order had been made first, & notice published afterwards, this ct., on *certiorari*, would quash the order for that reason.—*R. v. ARKWRIGHT* (1848), 12 Q. B. 960; 3 New Mag. Cas. 74; 18 L. J. Q. B. 26; 12 L. T. O. S. 271; 13 J. P. 4; 13 Jur. 300; 116 E. R. 1130.

Annotations:—*Reid*. *Colonial Bank of Australasia v. Willan* (1874), L. R. 5 P. C. 417. *Mentd*. *R. v. Salford Overseers* (1852), 19 L. T. O. S. 165; *Scott v. Scott*, [1921] P. 107.

2821. — Under Tithe Act, 1860 (c. 93).]—The notice required by sect. 28 of the above Act refers to a notice of an application that has already been made, & where a fourteen days' notice has been given of an intention to apply to the justices, & they hear the application *ex p.*, & make an order under the sect., this ct. will grant a writ of *certiorari* to quash the same.—*R. v. SAYERS & THACKWELL* (1860), 3 L. T. 405.

2822. — Under Highway Act, 1864 (c. 101).]—There were three roads, each in a different parish, running from three turnpike roads, & forming, by their junction together, a figure like a capital Y. The three limbs met at D., & the ends of the limbs met the turnpike roads at A., B., & C. On application by the highway board of the district two justices, made a separate certificate as to each

road, under sect. 21 of the above Act, that the road from D. to A., from D. to B., & from D. to C., was unnecessary. These certificates were affirmed on appeal by orders of quarter sessions, & it was ordered that the roads should cease to be repaired by the parishes. E., an inhabitant of one of the parishes, & living in the neighbourhood of the roads, obtained a rule for a *certiorari* to bring up the orders & certificates for the purpose of quashing them on the ground that they were void by reason of the notices not having been affixed at the places required by law. A notice had been posted at A., B., C., respectively, but no notice at all had been posted at D. in accordance with the provisions of Highway Act, 1835 (c. 50), s. 85:—

Held: (1) the actual publication of the prescribed notices at each end of the road to be dealt with was a condition precedent to the jurisdiction of the two justices, & although the roads formed one system, yet each of the roads having been treated as a separate road, this condition had not been fulfilled, & the orders were therefore void as made without jurisdiction; (2) though a *certiorari* is not a writ of course, yet as applt. had by reason of his local situation a peculiar grievance of his own, & was not merely applying as one of the public, he was entitled to the writ *ex debito justitiæ*.

Where the party grieved has by his conduct precluded himself from taking an objection, the ct. will not permit him to make it. In other cases where the application is by the party grieved, so as to answer the same purpose as a writ of error, we think that it ought to be treated, like a writ of error, as *ex debito justitiæ*, but where applt. is not the party grieved, who substantially brings error to redress his private wrong, but comes forward as one of the general public having no particular interest in the matter the ct. has a discretion (*BLACKBURN, J.*).—*R. v. SURREY JJ.* (1870), L. R. 5 Q. B. 466; 39 L. J. M. C. 145; 34 J. P. 614.

Annotations:—*As to* (2) *Consd*. *R. v. Nicholson*, [1899] 2 Q. B. 455; *R. v. Williams, Ex p. Phillips*, [1914] 1 K. B. 608. *Reid*. *R. v. Cockerell* (1871), L. R. 6 Q. B. 352; *Julius v. Oxford Bp.* (1880), 5 App. Cas. 214; *R. v. Sherrard & Surrey JJ., Re Nuttall* (1888), 4 T. L. R. 540; *R. v. Groom* (1901), 70 L. J. K. B. 636; *R. v. Bedfordshire County Council, Ex p. Sear*, [1920] 2 K. B. 465; *R. v. Richmond Confirming Authority, Ex p. Howitt* (1920), 37 T. L. R. 62; *R. v. Butt, Ex p. Brooke* (1922), 38 T. L. R. 537. *Generally, Mentd*. *Cook v. Ipswich L. B. of Health* (1871), 24 L. T. 579.

2823. — Under Special Constables Act, 1838 (c. 80), s. 1.]—Justices on application *ex p.* stating that a tumult was apprehended, made an order under Special Constables Act, 1831 (c. 41), s. 1, appointing a special constable. Afterwards also, on application, *ex p.*, they made an order under sect. 1 of the above Act directing the payment of the expenses of the constable to be made by the railway co. in whose works the tumult originated. No notice of the latter order was ever given to the co.:—*Held*: inasmuch as the second order imposed a payment on the co., notice ought to have been given to the co. that they might show cause, & the order would be quashed.—*R. v. CHESHIRE LINES COMMITTEE* (1873), L. R. 8 Q. B. 344; 42 L. J. M. C. 100; 28 L. T. 808; 37 J. P. 806; 21 W. R. 846.

2824. — Not necessary on making orders of removal—Order of settlement under 8 & 9 Vict., c. 126.]—*Ex p. MONKLEIGH OVERSEERS* (1848), 8 New Sess. Cas. 94; 17 L. J. M. C. 76; 10 L. T. O. S. 378; 12 Jur. 354; 12 J. P. Jo. 505.

Annotations:—*Reid*. *R. v. Hatfield Peverel* (1849), 13 J. P. 650; *R. v. Bruce*, [1892] 2 Q. B. 138. *Mentd*. *R. v. Carnarvon & Anglessea Grdms.* (1849), 14 L. T. O. S. 200.

Under Licensing Acts.]—See INTOXICATING LIQUORS.

See, further, LUNATICS & PERSONS OF UNSOUND MIND; POOR LAW.

Service of summons—In bastardy proceedings.]—See BASTARDY, Vol. III., p. 392, Nos. 302 *et seq.*

—To give magistrates jurisdiction.]—See MAGISTRATES.

Preliminary requisite not complied with—Inquisition under private Act.]—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 209, No. 912.

2825. Complaint under Profiteering Act, 1919 (c. 66)—Complaint made more than four days after sale—Board of Trade Regulations, 1919, Reg. 15.]—A hire-purchase agreement was made Oct. 27, 1919, & the invoice was delivered Nov. 1. Complaint was made to the Profiteering Committee on Nov. 4:—*Held*: the complaint was out of time, the period fixed by the above reg. being “within four days of the date of the sale or transaction,” the delivery of the invoice not being either a sale or transaction within the reg., & a rule absolute for *certiorari* would be granted.—*R. v. HAMMER-SMITH PROFITEERING COMMITTEE, Ex p. BURTON (S. & R.), LTD. (1920)*, 89 L. J. K. B. 604; 122 L. T. 720; 84 J. P. 79; 36 T. L. R. 264; 18 L. G. R. 271, D. C.

iii. Facts Necessary to give Jurisdiction.

2826. General rule.]—4 & 5 Will. 4, c. 40, s. 7, reciting 10 Geo. 4, c. 56, gives justices jurisdiction in cases where arbitrators appointed pursuant to the latter statute have neglected or refused to make an award. An order made by justices of R. adjudicated, that J. having been expelled from a philanthropic society, the case was referred to arbitrators, that they neglected & refused to make any award, & it then went on to adjudge that J. be reinstated as a member of the society. It appeared by the affidavits that the society was formed at L., & that the meetings were held & the business transacted there, but members need not reside within the borough of L., & the rules of the society were enrolled with the clerk of the peace for R. By rule 26, matters in dispute are to be referred to arbitrators, who are required to hear evidence on both sides, & their decision is to be final & binding on all parties. It also appeared that an award had been made, but that the arbitrators, when the case was before them, refused to hear the evidence which J. alleged he was then prepared to produce. The order being brought into this ct. by *certiorari*:—*Held*: the adjudication in the order that the arbitrators had neglected & refused to make an award, was not conclusive of that fact, inasmuch as it was an adjudication upon one of the preliminaries necessary for constituting the justices a lawful tribunal for the matter, & not an adjudication of a fact which arose in the course of an inquiry in which it was previously shown they had jurisdiction.

The decision of a tribunal, lawfully constituted, upon a question properly brought before it respecting a matter within its jurisdiction, is not open to review on *certiorari*, but the decision of persons assuming to be a tribunal, that they are lawfully constituted, is open to review. Where, on the

proceeding leading to the adjudication, a want of the jurisdiction appears, a decision asserting jurisdiction is of no avail; where the charge is really insufficient, but is misstated in drawing up the proceedings, so that they appear regular, in such case it is competent to *deft.* to show by affidavit what the real charge was, & if that shows that the magistrate ought never to have begun the inquiry, the order is to be quashed (*LORD DENMAN, C.J.*).—*R. v. GRANT (1849)*, 14 Q. B. 43; 3 New Mag. Cas. 183; 4 New Sess. Cas. 13; 19 L. J. M. C. 59; 13 L. T. O. S. 301; 13 J. P. 408; 13 Jur. 1026; 117 E. R. 17.

Annotations:—Mentd. Ex p. Long (1854), 24 L. T. O. S. 73; *Bache v. Billingham*, [1894] 1 Q. B. 107.

2827. Neglect & refusal of arbitrators to make award—4 & 5 Will. 4, c. 40, s. 7.]—R. v. GRANT, No. 2826, *ante*.

2828. Objection to validity of rate—Whether dispute *bonâ fide*.]—R. v. NUNNELEY, No. 2860, *post*.

2829. ——— Review of justices’ decision.]—At the hearing of a summons to enforce payment of a church-rate, although the justices are the tribunal to decide in the first instance whether the *deft.*’s objection is *bonâ fide* or not, they cannot, by deciding, contrary to the facts, that it is not *bonâ fide*, give themselves jurisdiction; & this ct. will review their decision.—R. v. HUNTSWORTH (1864), 33 L. J. M. C. 131; 10 Jur. N. S. 945; 13 W. R. 7. *Annotation:—Mentd. Brown v. Cocking (1868)*, 9 B. & S. 503.

2830. ———.]—PEASE v. CHAYTOR (1863), 3 B. & S. 620; 32 L. J. M. C. 121; 8 L. T. 613; 27 J. P. 309; 9 Jur. N. S. 664; 11 W. R. 563; 122 E. R. 233.

Annotations:—Reid. R. v. Huntsworth (1864), 13 W. R. 7; *Colonial Bank of Australasia v. Willan (1874)*, L. R. 5 P. C. 417; *R. v. Woodhouse*, [1906] 2 K. B. 501. *Mentd. Polley v. Fordham (No. 2) (1904)*, 91 L. T. 525; *May v. Mills (1914)*, 30 T. L. R. 287.

2831. ———.]—Some disputes having arisen in a parish by reason of the refusal of the incumbent to bury the child of a Baptist in consecrated ground, some of the inhabitants determined to contest the church rate. The *deft.* was summoned for non-payment of his rate, & appeared by his solr., who stated that he contested the validity of the rate. But the justices, believing that the dispute about the burial of the child was the real cause of the refusal to pay, & that the legal objection was not made *bonâ fide*, held that their jurisdiction was not ousted, & made an order for payment of the rate. Upon *certiorari* to quash this order:—*Held*: to entitle the justices to assume jurisdiction in such case, they must have very strong evidence of *mala fides*, & the facts disclosed by the affidavits were not sufficient ground for such a conclusion.—R. v. PEDLER (1865), 12 L. T. 17.

Annotation:—Mentd. R. v. Sandford (1874), 30 L. T. 601.

Ouster of jurisdiction.]—See Sub-sect. 2, B. (b) *iv.*, *post*.

2832. Real residence of applicant for licence.]—R. v. MANCHESTER JJ., No. 2734, *ante*.

2833. ——— Not collateral—Question for justices to decide.]—R. v. WOODHOUSE, No. 2421, *ante*.

Whether order of licensing justices removable by *certiorari*.]—See Sub-sect. 2, A., *ante*.

2834. Whether inclosed land a park—Highway

PART IX. SECT. 6, SUB-SECT. 2.—B. (b) ii.

g. Preliminary requisite not complied with—Under Assessment Act, R. S. N. S., c. 73.]—Re GILLIES ASSESSMENT (1907), 42 N. S. R. 44.—CAN.

h. ———.]—Where, on the

appeal of a ratepayer the ct. increased the assessment of a company, without the required notice to the company, & there was an application for a writ of *certiorari*:—*Held*: the *certiorari* must be refused.—*Re DAVISON LUMBER CO. (1917)*, 50 N. S. R. 491; 33 D. L. R. 283.—CAN.

k. ——— Under Licensing (Ireland) Act, 1874—Renewal of licence.]—R. (MOORE) v. ANTRIM JJ., [1917] 2 I. R. 347.—IR.

l. ——— Mining Act, 1891—Refusal of hearing.]—Re HOWELL & ROSS (1899), 17 N. Z. L. R. 458.—N.Z.

Sect. 6.—Purposes of the writ: Sub-sect. 2, B. (b) iii. & iv.]

Act, 1835 (c. 50), s. 54.]—On an application by a surveyor of highways for a licence under sects. 53 & 54 of the above Act the justices made an order authorising him to take materials for a period of five years from certain enclosed land which in the opinion of the High Ct. was a park:—*Held*: the question whether the land was a park or not was one which was preliminary to the exercise of the jurisdiction given by the statute, & the justices could not by wrongly deciding that the land was not a park give themselves jurisdiction in the matter, & a rule for *certiorari* would be made absolute.—*R. v. BRADFORD*, [1908] 1 K. B. 365; 77 L. J. K. B. 475; 98 L. T. 620; 72 J. P. 61; 24 T. L. R. 195; 6 L. G. R. 333, D. C.

Annotations:—*Mentd.* *May v. Mills* (1914), 30 T. L. R. 287; *R. v. Bloomsbury Income Tax Comrs.*, [1915] 3 K. B. 768.

2835. Whether mentally deficient person neglected—Mental Deficiency Act, 1913 (c. 28), s. 2 (1) (b).]—*Re WILKINSON* (1919), 83 J. P. Jo. 422.

Ouster of jurisdiction.]—*See* Sub-sect. 2, B. (b) iv., *post*.

iv. Ouster of Original Jurisdiction.

2836. By claim of right—At common law—General rule.]—*R. v. CRIDLAND*, No. 2883, *post*.

2837. ——— Title to tithes.]—*R. v. BOLTON* (1732), 2 Barn. K. B. 149; 94 E. R. 414.

2838. ———.]—An order of justices brought up by *certiorari* on the foot of the title of tithes coming into question within the intent of Tithes & Church Rates Recovery Act, 1714 (c. 6), is returned & the writ superseded, on it being shown that the parties objecting to pay were Quakers, refusing merely from their scruples.

The rule for the *certiorari* having been made absolute, & the return thereto having been filed, ought not to stand in the way & prevent our coming at the real justice & merits of the case, for if the *certiorari* issued *improvidē* we can order it to be superseded, & the return to be taken off the file (*LORD MANFIELD, C.J.*).—*R. v. WAKEFIELD* (1758), 1 Burr. 485; 2 Keny. 164; 97 E. R. 417. *Annotations*:—*Reid.* *R. v. Micklethwayte* (1770), 4 Burr. 2522; *Backhouse v. Bishopwearmouth* (1860), 9 C. B. N. S. 315. *Mentd.* *Bishopwearmouth v. Backhouse* (1862), 7 L. T. 438.

2839. ——— Right to repair highway—Indictment for non-repair.]—(1) Where several persons were prosecutors of an indictment, removed by *certiorari*, for not repairing a highway:—*Held*: they were entitled to costs under Quarter Sessions Procedure Act, 1694 (c. 11), s. 3, one as constable of the manor within which the highway lay, the others as persons grieved, they having used the way for many years in passing & repassing from their homes to the next market town, & being obliged, by reason of the want of repair, to take a more circuitous route.

(2) Upon indictment against a parish for not repairing a highway, the right to repair may come in question, so as to entitle the parish to remove it by *certiorari*, though the parish plead not guilty only.—*R. v. TAUNTON ST. MARY (INHABITANTS)* (1815), 3 M. & S. 465; 105 E. R. 685.

Annotations:—*As to* (1) *Consd.* *R. v. Monks Kirby* (1852), 16 J. P. 324; *R. v. Surrey JJ.* (1870), L. R. 5 Q. B. 466. *Generally, Mentd.* *R. v. Middlesex JJ.* (1832), 3 B. & Ad. 938; *R. v. Nicholson* (1899), 68 L. J. Q. B. 1034.

2840. ——— Bonâ fide claim—Title to land.]—It is sufficient cause for granting a writ of *certiorari* to remove proceedings in replevin from

a ct. of great sessions in Wales that the title to the freehold is in question.

Qu.: whether the Vice-Chancellor has authority to order a writ of *certiorari* to issue.—*EDWARDS v. BOWEN* (1826), 2 Russ. 153; 38 E. R. 294.

Annotation:—*Reid.* *Worthington v. Remnant* (1840), 10 Sim. 558.

2841. ———.]—*R. v. TREVOR (LORD)* (1888), 4 T. L. R. 254, D. C.

2842. ——— Title to fish.]—Upon an information under Larceny Act, 1861 (c. 96), s. 24, against deft. for attempting to take, otherwise than by angling, fish in a river in which prosecutor had a private right of fishery, prosecutor proved the purchase by him of the manor of S., with the fishery appurtenant thereto, & gave other evidence in support of his right. Deft. proved that the river was a tidal navigable river, & called two witnesses, who said that they had fished in it for forty years without interruption. The justices convicted deft.:—*Held*: a *bonâ fide* claim of title to fish in that place was made by deft. before the justices, & there was no reasonable evidence on which they could find that it was not made *bonâ fide*, & the conviction would be quashed.—*R. v. STIMPSON* (1863), 4 B. & S. 301; 2 New Rep. 422; 32 L. J. M. C. 208; 8 L. T. 536; 27 J. P. 678; 10 Jur. N. S. 41; 9 Cox, C. C. 356; 122 E. R. 472.

Annotations:—*Reid.* *Colonial Bank of Australasia v. Willan* (1874), L. R. 5 P. C. 417; *R. v. Critchlow* (1878), 20 W. R. 681. *Mentd.* *Hudson v. Macrae* (1863), 4 B. & S. 585; *Paley v. Birch* (1867), 8 B. & S. 336; *Booth v. Brough* (1869), 33 J. P. 694; *Lovey v. Stallard* (1874), 30 L. T. 792; *Burton v. Hudson*, [1909] 2 K. B. 564.

2843. ——— Not colourable.]—Upon an information under Game Act, 1831 (c. 32), s. 30, for a trespass in search of game on land in the occupation of the lord of the manor, deft. asserted that the land was not, as alleged by informant, common or waste land within the manor, but was land vested in the inhabitant householders of certain parishes under an inclosure award, & claimed a prescriptive right to kill game on the land, but did not show that he was an inhabitant householder of either of those parishes. The justices convicted deft., & in a case stated under Summary Jurisdiction, 1857 (c. 43), set out the evidence upon which they decided that the land was waste or common of the manor, & found that deft. had no ground for believing that he had the right of shooting over it. By Game Act, 1831 (c. 32), s. 30, it is provided, "That any person charged with any such trespass shall be at liberty to prove, by way of defence, any matter which would have been a defence to an action at law for such trespass:—*Held*: (1) the jurisdiction of the justices was not ousted by the claim of a prescriptive right in gross to kill game on the land, there being no colour for such a claim; (2) nor by the assertion that the land was not in the occupation of the lord of the manor, but was vested in other persons, as the claim of title to oust the jurisdiction of the justices must be a claim of title in the party charged, & not in a third person.—*CORNWELL v. SANDERS* (1862), 3 B. & S. 206; 1 New Rep. 57; 32 L. J. M. C. 6; 7 L. T. 356; 27 J. P. 148; 9 Jur. N. S. 540; 11 W. R. 87; 122 E. R. 78.

Annotations:—*As to* (1) *Consd.* *R. v. Stimpson* (1863), 4 B. & S. 301. *Reid.* *Watkins v. Major* (1875), L. R. 10 C. P. 682. *As to* (2) *Consd.* *R. v. Stimpson* (1863), 4 B. & S. 301. *Generally, Mentd.* *Hudson v. Macrae* (1863), 3 New Rep. 76.

2844. ——— Involving question for decision.]—Deft. was convicted under Highway Act, 1864 (c. 101), s. 51, & the conviction did not state that deft. had "encroached" on the highway. A writ of *certiorari* having been granted in chambers

in vacation, & a rule *nisi* to quash the conviction having been drawn up on motion to make it absolute:—*Held*: *certiorari* having been taken away by Highway Act, 1835 (c. 50), s. 107, the omission of the word "encroach" did not render the conviction bad, & *certiorari* would not lie for such a defect, & therefore the ct. would not quash the conviction on that ground.

Deft., being charged with an offence under Highway Act, 1864 (c. 101), s. 51, contended that he was the owner of the land on which a fence had been erected, & that it did not form part of the highway, & that the justices had no jurisdiction to adjudicate in the matter, on the ground that title to land came in question:—*Held*: the justices had jurisdiction, the question for them being whether or not the land in question formed part of the highway, & a rule *nisi* to quash the conviction would be discharged.—*R. v. BRADLEY* (1894), 63 L. J. M. C. 183; 70 L. T. 379; 58 J. P. 199; 10 T. L. R. 346; 17 Cox, C. C. 739; 10 R. 183, D. C.

2845. — *Not claim impossible in point of law—Although bonâ fide.*—In answer to an information before two justices under Larceny Act, 1861 (c. 96), s. 24, for unlawfully & wilfully attempting to take fish in a non-navigable river being the private fishery of another, by angling at an hour not between the beginning of the last hour before sunrise & the expiration of the first hour after sunset, the accused justified under a supposed right on the part of the public to fish in that water:—*Held*: the accused justifying himself under the *bonâ fide*, though mistaken, notion of such a right, did not make such a claim of right as ousted the jurisdiction of the justices.—*HUDSON v. MACRAE* (1863), 4 B. & S. 585; 3 New Rep. 76; 33 L. J. M. C. 65; 9 L. T. 678; 28 J. P. 436; 12 W. R. 80; 122 E. R. 579.

Annotations:—*Fold*. Hargreaves v. Diddams (1875), L. R. 10 Q. B. 582. *Reid*. Watkins v. Major (1875), L. R. 10 C. P. 662; Mussett v. Burch (1876), 35 L. T. 486; Pearce v. Scotcher (1882), 46 J. P. 248; Reece v. Miller (1882), 8 Q. B. D. 626.

2846. — — — — —.]—It is not sufficient to oust the jurisdiction of the justices in regard to a charge of trespass in pursuit of game under Game Act, 1831 (c. 32), that there is an honest claim of right if such claim is absurd & impossible in point of law.—*WATKINS v. MAJOR* (1875), L. R. 10 C. P. 662; 44 L. J. M. C. 164; 33 L. T. 352; 39 J. P. 808; 24 W. R. 164.

Annotations:—*Conad*. Mann v. Nurse (1901), 17 T. L. R. 569; Dickinson v. Ead (1911), 111 L. T. 378. *Reid*. Watkins v. Smith (1878), 38 L. T. 525; Philpot v. Bugler (1890), 54 J. P. 646. *Mentd*. R. v. Tolson (1889), 23 Q. B. D. 168.

2847. — — — — —.]—A river was made navigable by a co. & the public allowed to navigate it on payment of tolls, under certain Acts of Parliament, but the soil & rights of the owners on each side of the river remained untouched. The public had fished for many years in the river without interruption by the owner of the soil, but he caused a notice to be set up forbidding all fishing. Applt. afterwards fished in the river, & an information was taken out against him under Larceny Act, 1861 (c. 96), s. 24. At the hearing applt. set up the rights in the public, & contended that the jurisdiction of the justices was ousted by this *bonâ fide* claim of rights:—*Held*: that the right set up could not exist in law, & therefore

title could not come in question, & the jurisdiction of the justices was not ousted.—*HARGREAVES v. DIDDAMS* (1875), L. R. 10 Q. B. 582; 44 L. J. M. C. 178; 32 L. T. 600; 40 J. P. 167; 23 W. R. 828.

Annotations:—*Reid*. Mussett v. Burch (1876), 35 L. T. 486; Pearce v. Scotcher (1882), 46 L. T. 342; Reece v. Miller (1882), 8 Q. B. D. 626; Smith v. Andrews, [1891] 2 Ch. 878. *Mentd*. Sherras v. De Rutzen, [1895] 1 Q. B. 918.

2848. — *Proceedings under Highway Act, 1835 (c. 50).*—*Ex p. OWEN* (1851), 16 J. P. Jo. 51.

2849. — *Alternative remedy open.*—*Ex p. WHITTAKER* (1859), 23 J. P. Jo. 84.

2850. — *Under Offences against the Person Act, 1861 (c. 100)—Bonâ fide dispute as to title to land.*—On the hearing of a complaint for an assault, under sect. 42 of the above Act, if it be shown that a *bonâ fide* question as to title to land is involved, the jurisdiction of the justices is at once ousted by sect. 46, & the justices cannot proceed to inquire into & determine by summary conviction any excess of force alleged to have been used in the assertion of title.—*R. v. PEARSON* (1870), L. R. 5 Q. B. 237; 39 L. J. M. C. 76; 22 L. T. 126; 34 J. P. 582; 11 Cox, C. C. 493.

Annotation:—*Conad*. R. v. French, [1902] 1 K. B. 637.

2851. — *Dispute as to use of common land.*—In the proviso to s. 46 of the above Act, which enacts that nothing therein contained shall authorise any justice to hear & determine any case of assault in which "any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom," the words "title to" govern, not only the words "lands, etc.," but also the words "any interest therein or accruing therefrom."

An assault was committed by one commoner upon another commoner in the course of a dispute as to whether the latter was or was not at the time of the assault in the act of using common land in a manner in excess of the right of common. The latter summoned the former for assault, & he was convicted:—*Held*: there was no question raised as to the title to any lands, or as to the title to any interest in land, & the jurisdiction of the justices to hear & determine the case of assault was not ousted.—*R. v. FRENCH*, [1902] 1 K. B. 637; 71 L. J. K. B. 382; 86 L. T. 587; 66 J. P. 487; 50 W. R. 555; 18 T. L. R. 440; 46 Sol. Jo. 360; 20 Cox, C. C. 200, D. C.

2852. — *Under Malicious Damage Act, 1861 (c. 97), s. 52—Fair & reasonable supposition.*—Applt. was charged under sect. 52 of the above Act on the following facts. Applt., being employed by D., went with thirteen other men &, without any communication with resp., entered an enclosed garden of resp.'s & dug a ditch four feet wide & three feet deep, & from forty to fifty yards long, extending from one end of the garden to the other. There had, some fifteen years ago, been a ditch over part of the ground, before it was enclosed as a garden by resp.'s predecessor in title, but there had never been any ditch for about twenty yards of the length cut by applt. D. was exercising what he considered a public right.

The justices found that applt. did not act under a reasonable supposition that he had a right to do the act complained of, & convicted him accordingly:—*Held*: that the conviction was right, the express proviso in sect. 52 overrode the proviso usually implied as to summary convictions, that a *bonâ fide* claim of right ousted the jurisdiction of the

PART IX. SECT. 6, SUB-SECT. 2.—
B. (b) iv.

2845 i. *By claim of right—Not claim impossible in point of law—Although bonâ fide.*—Prosecutor was convicted of trespass on the lands of C. He

admitted entry on the lands, but claimed it was made in exercise of a right of way. The right claimed was a public right of way from a public road across C.'s lands to a private bathing-place on the land of R., C.'s

neighbour:—*Held*: the right claimed being one impossible in law, the conviction was good; & the ct. would not quash it on *certiorari*.—*R. v. TYRONE TRUSTEES*, [1917] 2 I. R. 96.—*IR.*

Sect. 6.—Purposes of the writ: Sub-sect. 2, B. (b) *iv.*, (c) *i.* & *ii.*, (d).]

justices; under the circumstances, applt. could not be in a better position than D. who employed him, & assuming in his favour, which did not appear, that he had all the knowledge which D. had, the justices were right in finding that he did not act under a fair & reasonable supposition of right.—**WHITE v. FEAST** (1872), L. R. 7 Q. B. 353; 41 L. J. M. C. 81; 26 L. T. 611; 36 J. P. 436.

Annotations:—*Consd.* **R. v. Mussett** (1872), 37 J. P. 133. *Refd.* **R. v. French** (1873), 37 J. P. 404; **Denny v. Thwaites** (1876), 2 Ex. D. 21; **R. v. Fane JJ.** (1885), 49 J. P. Jo. 329; **Brooks v. Hamlyn** (1899), 79 L. T. 734. *Mentd.* **Birnie v. Marshall** (1876), 35 L. T. 373; **Cole v. Miles** (1888), 57 L. J. M. C. 132.

2853. ————**]**—**Malicious Damage Act, 1861 (c. 97), s. 52**, excludes the operation of that Act, in any case where the party acted under a fair & reasonable supposition that he had a right to do the act complained of:—**Held**: a conviction by justices in petty sessions under that statute cannot be brought up by *certiorari* on the ground that they had no jurisdiction inasmuch as the defendant had set up a *bonâ fide* claim of right, but the exemption is implicitly restricted to cases where the justices are reasonably satisfied of the fair & reasonable character of the claim.—**R. v. MUSSETT** (1872), 26 L. T. 429; 37 J. P. 133; 20 W. R. 670.

2854. ————**]**—**R. v. FANE, ETC. JJ.** (1885), 49 J. P. Jo. 329, D. C.

2855. ————**]**—**Resp.'s wife was the owner of the land on each side of a public footpath & also of the land over which the footpath passed. To prevent his cattle straying along the footpath, the resp. erected in the middle of the footpath two wooden posts, one at the entrance to the footpath, the other some distance further down the path. There was a space of about two feet on either side of these posts through which foot passengers could, but cattle could not, pass. Appls., with a number of others, inhabitants of the district, considering that these posts interfered with their use of the footpath, pulled up one of them & threw it over the fence. They were convicted, under Malicious Damage Act, 1861 (c. 97), s. 52, of having committed wilful damage to the post:—Held**: applts. had acted under a fair & reasonable supposition that they had a right to do what they did, & they therefore came within the proviso of the sect., & ought not to have been convicted, as the jurisdiction of the justices was ousted.—**USHER v. LUXMORE** (1889), 62 L. T. 110; 54 J. P. 405; 38 W. R. 254, D. C.

2856. ————**]**—**Re BIRON, Ex p. SMITH** (1890), 7 T. L. R. 42, D. C.

See, further, MAGISTRATES.

2857. Payment of rates—Ecclesiastical Courts Act, 1813 (c. 127), s. 7—Bonâ fide dispute—Not mere statement of intention to dispute.]—A mere statement to the justices by the party complained of, under sect. 7 of the above Act, that he disputes the rate, & that he has entered a caveat in the ecclesiastical ct. against its being allowed, does not deprive the justices of jurisdiction, & they must still hear & examine, to ascertain whether the rate is *bonâ fide* disputed.—R. v. WROTTESELEY & GORDON** (1830), 1 B. & Ad. 648; 9 L. J. O. S. M. C. 51; 109 E. R. 928.**

Annotations:—*Refd.* **Dale v. Pollard** (1847), 10 Q. B. 504. *Mentd.* **Ricketts v. Bodenham** (1836), 5 L. J. K. B. 102; **Lilley v. Harvey, Owen v. Piores** (1848), Cox, M. & H. 115; **Thompson v. Ingham** (1850), 19 L. J. Q. B. 189; **R. v. Colling** (1852), 17 Q. B. 816; **R. v. Staffordshire JJ., Ex p.**

Abbotts Bromley (1856), 20 J. P. 485; **Pease v. Chaytor** (1863), 3 B. & S. 620.

2858. ————**]**—**A parishioner summoned by the churchwardens before justices, under Ecclesiastical Courts Act, 1813 (c. 127), s. 7, for non-payment of a church rate, alleged that the rate was partly retrospective, & that several items were otherwise illegal, & stated that he intended to try the validity of the rate in the ecclesiastical ct. The justices said they would not then grant an order, but would do so at the end of a month unless the objecting party proceeded to try the validity of the rate in the meantime. No such proceeding was taken, & the parties appeared again before the justices at the end of a month. The objector continued to assert the invalidity of the rate & his desire to try the question, & stated that it was not legally in his power to compel the churchwardens to institute proceedings against him in the ecclesiastical ct., but he challenged them to do so, & he contended that the jurisdiction of the justices was ousted by the third proviso of sect. 7 of the above Act. The justices nevertheless made an order for payment of the rate. Afterwards, on being applied to for a distress warrant to levy such rate, they declined to grant it & said they threw themselves upon Justices Protection Act, 1848 (c. 44), s. 5. On motion, under that clause, calling upon the justices to show cause why they should not issue such warrant:—Held**: the justices, on the first hearing, had sufficient ground for considering the rate to be *bonâ fide* disputed, the test of trying the validity of the rate between the first & second hearing was one which ought not to have been imposed, the ultimate order was bad, & the justices could not be called upon to enforce it.—**R. v. COLLING** (1852), 17 Q. B. 816; 117 E. R. 1493.

Annotations:—*Refd.* **R. v. Staffordshire JJ., Ex p. Abbotts Bromley** (1856), 20 J. P. 485; **R. v. Nunneley** (1858), E. B. & E. 852; **R. v. Leicester JJ. & Compton** (1860), 29 L. J. M. C. 203; **Pease v. Chaytor** (1863), 3 B. & S. 620.

2859. ————**]**—**R. v. CROOK, ETC., LANCAHIRE JJ.** (1857), 21 J. P. 627.

2860. ————**]**—**Erroneous assumption of jurisdiction.]—At the hearing of a summons, calling on N. to show cause why he should not be dealt with according to law for non-payment of arrears of a church rate, he appeared & informed the magistrates that he disputed the validity of the rate, & that one of his objections was, that the chairman of the vestry at which the rate was made had refused to put a motion which had been moved and seconded, that the vestry clerk's salary should be struck out of the rate, that another objection was, that the chairman had refused to put a motion made by him, N., that the necessary funds should be provided for by voluntary contributions, & he asked the magistrates to look at counsels' opinion, which had been given on the question, so as to satisfy themselves that he was supported by high legal authority. The magistrates refused to do this, saying that it would not influence their decision. N. then offered to prove that the facts detailed above had occurred at the vestry. He was asked by the magistrates if he would swear to the *bonâ fide* nature of his objections, whereupon he tendered himself to be sworn, but was not sworn. The magistrates made an order upon him to pay, & subsequently issued a distress warrant for levying the amount from his goods. A writ of *certiorari* having issued to bring up the order that it might**

m. — Under Police Offences Act—Bonâ fide claim—Title to land.]—HUNTER v. SHERWIN (1869), 6 W. W. & A. B. 26.—**AUS.**

n. — Under Consolidated Statutes, c. 62—Bonâ fide claim—Title to land.]—Ex p. ESTABROOKS (1879), 19 N. B. R. 283.—**CAN.**

o. — Under Criminal Code, s. 887—Bonâ fide claim—Title to land.]—R. v. O'BRIEN (1907), 3 E. L. R. 425; 38 N. B. R. 109.—**CAN.**

be quashed, cause was shown on affidavits of the magistrates, which stated that they had considered the allegations of N., & had determined that they were not made in good faith, but were made & put forward by him as a pretext merely for avoiding payment of the rate:—*Held*: the justices could not give themselves jurisdiction by erroneously & capriciously deciding contrary to the truth upon the question upon which their jurisdiction depended, & as the validity of the rate was *bond fide* disputed, the magistrates had no jurisdiction, & their order must be brought up to be quashed.—*R. v. NUNNELEY* (1858), *E. B. & E.* 852; 27 *L. J. M. C.* 260; 31 *L. T. O. S.* 234; 23 *J. P.* 149; 4 *Jur. N. S.* 1146; 120 *E. R.* 728; *sub nom. Re NUNNELEY*, 6 *W. R.* 654.

Annotations:—*Apld. R. v. Huntsworth* (1864), 33 *L. J. M. C.* 131. *Reid. Pease v. Chaytor* (1863), 3 *B. & S.* 620. *Mentd. Brown v. Cocking* (1868), 9 *B. & S.* 503.

See, generally, ECCLESIASTICAL LAW.

2861. Recovery of parish land—Poor Relief Act, 1819 (c. 12), s. 24—Conflicting evidence as to title—Jurisdiction of justices.—The jurisdiction of justices in giving a summary remedy for the recovery of parish lands & tenements, under sect. 24 of the above Act, cannot be exercised without their first deciding whether the tenements are parish property or not, & if there is conflicting evidence on that preliminary point, the justices have not only power to decide, but their finding will not be disturbed by the superior ct. on a rule for a *certiorari*.—*Ex p. VAUGHAN* (1866), *L. R.* 2 *Q. B.* 114; 36 *L. J. M. C.* 17; *sub nom. R. v. LLANFILLO, BRECKNOCKSHIRE JJ.*, 15 *L. T.* 277; 31 *J. P.* 7.

Annotation:—*Reid. R. v. Nat Bell Liquors*, [1922] 2 *A. C.* 128.

(c) *Defect of Jurisdiction from Interest of Tribunal.*
i. *In General.*

2862. General rule.—If any one of the magistrates hearing a case at sessions be interested in the result, the ct. is improperly constituted, & an order made in the case will be quashed on *certiorari*.—*R. v. HERTFORDSHIRE JJ.* (1845), 6 *Q. B.* 753; 1 *New Sess. Cas.* 470; 14 *L. J. M. C.* 73; 4 *L. T. O. S.* 291; 9 *J. P.* 198; 9 *Jur.* 424; 115 *E. R.* 284.

Annotations:—*Reid. R. v. Aberdare Canal Co.* (1850), 14 *Q. B.* 854; *R. v. Surrey JJ.* (1855), 19 *J. P. Jo.* 755; *Hayman v. Rugby School* (1874), *L. R.* 18 *Eq.* 28; *R. v. L. C. C., Ex p. Akkersdyk, Ex p. Fermentia*, [1892] 1 *Q. B.* 190.

2863.—*Ex p. STEEPLE MORDEN OVERSEERS* (1855), 19 *J. P. Jo.* 292.

2864.—*Not possibility of remote interest.*—It is no objection to the proceeding of an inferior corporate ct. upon a bye-law, that, from the nature of the proceeding, it might by possibility be inferred that the members of the corp. would feel a remote interest in the question.—*SHAW v. FURZE* (1832), 1 *L. J. K. B.* 216.

2865. Bias—Juror interested in enquiry.—*Re HATFIELD CHASE PRESENTMENT OF SEWERS* (1848), 12 *J. P. Jo.* 789.

2866.—*Appeal from decision of licensing officer to town council—Licensing officer clerk of town council.*—It is not sufficient to sustain an

application for a writ of *certiorari* to bring up, for the purpose of quashing, an order of the town council, to whom alone an appeal is given by statute from the decision of the licensing officer, that such officer is also clerk to the town council, not being a member thereof.—*VAUDA v. NEWCASTLE CORPN.*, [1899] *A. C.* 246; 68 *L. J. P. C.* 39; 79 *L. T.* 600, *P. C.*

2867.—*Not presence of respondent—At deliberation of appeal tribunal—Respondent taking no part in deliberations.*—On an appeal to an appeal tribunal against the refusal of a local tribunal to grant exemption from military service, the military representative, who is resp. to the appeal, has no right to be present during the deliberations of the appeal tribunal if applt. is excluded, but the mere fact that this has taken place as a matter of convenience without any objection on the part of applt. & without the military representative taking any part in the deliberations of the appeal tribunal will not entitle applt., when his appeal has been dismissed, to a *certiorari* for the purpose of quashing the dismissal.—*R. v. GLAMORGAN APPEAL TRIBUNAL, Ex p. FRICKER* (1917), 115 *L. T.* 930; 81 *J. P.* 85; 33 *T. L. R.* 152; 15 *L. G. R.* 142, *D. C.*

—*Of justices.*—*See MAGISTRATES.*

2868. Pecuniary interest—Shareholders in rival company.—*R. v. ABERDARE CANAL CO.*, No. 2727, *ante.*

2869.—*However small.*—There is no doubt that any direct pecuniary interest, however small, in the subject of an inquiry, does disqualify a person from acting as a judge in the matter (*BLACKBURN, J.*).—*R. v. RAND* (1866), *L. R.* 1 *Q. B.* 230; 7 *B. & S.* 297; 35 *L. J. M. C.* 157; *sub nom. R. v. RAND, R. v. BRADFORD JJ.*, 30 *J. P.* 293.

Annotations:—*Consd. Hayman v. Rugby School* (1874), *L. R.* 18 *Eq.* 28; *R. v. Meyer* (1875), 1 *Q. B. D.* 173; *R. v. Farrant* (1887), 20 *Q. B. D.* 58; *R. v. Cumberland JJ., Ex p. Mid. Ry.* (1888), 58 *L. T.* 491. *Apld. R. v. Sunderland JJ.*, [1901] 2 *K. B.* 357. *Reid. R. v. M. S. & L. Ry.* (1867), *L. R.* 2 *Q. B.* 336; *R. v. Harrison* (1875), 24 *W. R.* 392; *R. v. Deal, Corp. & JJ., Ex p. Curling* (1881), 45 *L. T.* 439; *R. v. L. C. C., Re Empire Theatre* (1891), 71 *L. T.* 638. *Mentd. R. v. London JJ., Ex p. South Metropolitan Gas Co.* (1908), *Konst. Rat. App.* 1901-8, 642; *R. v. Middlesex JJ., Ex p. Hendon Union* (1908), 6 *L. G. R.* 739.

—*Of justices.*—*See MAGISTRATES.*

—*Sheriff shareholder in promoting company—Inquisition under Lands Clauses Consolidation Act, 1845 (c. 18).*—*See COMPULSORY PURCHASE OF LAND & COMPENSATION*, Vol. XI., p. 205, No. 833. *Effect of statutory restrictions—Where justices interested.*—*See No. 3087, post.*

ii. *Magistrates.*

Magistrates disqualified from acting.—*See MAGISTRATES.*

(d) *Error on Face of Proceedings.*

2870. General rule.—An order of justices, removed by *certiorari* in due time, may be quashed for objections upon the face of it, without a previous appeal to the sessions.—*R. v. STANLEY* (1782), *Cald. Mag. Cas.* 172.

Annotation:—*Mentd. R. v. Atkins* (1790), 4 *Term Rep.* 12.

2871.—*—*(1) *A certiorari always lies to remove proceedings under penal statutes, unless it*

PART IX. SECT. 6, SUB-SECT. 2.—
B. (c) i.

p. Bias—Judge's interest.—If the objection of interest in the judge is once taken, he ought not to entertain the case, & *certiorari* will be granted to quash the determination arrived at.—*MOLLOY v. GUNN* (1863), 2 *W. & W.* 76.—*AUS.*

2868 i. Pecuniary interest—Two mem-

bers of court shareholders—In plaintiff company.—Two members of a ct. were shareholders in a pltf. co.:—*Held*: a *certiorari* should be granted to quash the order made by them.—*R. v. LOWE, Ex p. PETERSON*, [1912] *S. R. Q.* 138.—*AUS.*

PART IX. SECT. 6, SUB-SECT. 2.—
B. (d).

q. Presentment.—Although the ct.

refuses to go behind a presentment to see whether it has been properly obtained, yet it will grant a *certiorari* when there is *prima facie* error on the face of it, & in the very source from which all presentments derive their efficacy.—*Re MAYO (COUNTY) PRESENTMENTS OF GRAND JURY* (1861), 7 *Ir. Jur.* 96; 14 *I. C. L. R.* 392.—*IR.*

6.—*Purposes of the writ: Sub-sect. 2, B. (d).]*

is expressly taken away, & an appeal never lies unless it is expressly given by the statute.

(2) This ct. will not take notice of any formal defect in the proceedings under a penal statute, unless it appears on the face of the conviction itself.—*R. v. CASHIOBURY HUNDRED JJ.* (1823), 3 Dow. & Ry. K. B. 35; 1 Dow. & Ry. M. C. 485.

Annotation:—Mentd. R. v. Wilson (1834), 1 Ad. & El. 627.

2872. —[*J.*—*R. v. CAMBRIDGESHIRE JJ.*, No. 2909, *post*.

2873. **Award of tithe commissioner.**—(1) Where an award of a tithe comr. is brought by *certiorari* under Tithe Act, 1837 (c. 69), s. 3, the ct. will enter into objections raised on the face of the award.

(2) To a motion for *certiorari* to bring up the award of an assistant tithe comr. it is no answer that the award is already in ct. under *certiorari* obtained by another party, & a rule absolute will be granted to quash the award.—*Re DENT COMMUTATION* (1845), 8 Q. B. 43; 115 E. R. 790; *sub nom. R. v. TITHE COMRS., Re DENT BOUNDARIES, NEWBY CASE*, 15 L. J. Q. B. 105; 5 L. T. O. S. 329; 9 J. P. 471; 10 Jur. 178.

2874. **Bastardy orders—Jurisdiction to make not shown.**—*R. v. SNARDLOW UNION GUARDIANS* (1844), 3 L. T. O. S. 241; *sub nom. R. v. SHARDLOW UNION GUARDIANS*, 8 J. P. Jo. 438.

2875. —[*J.*—*Ex p. RICHARDSON* (1845), 9 J. P. Jo. 787.

2876. —[*J.*—*Ex p. ROWE* (1847), 10 L. T. O. S. 116; 11 J. P. Jo. 805.

2877. — **Evidence not taken on oath.**—*Ex p. SMITH* (1845), 5 L. T. O. S. 40.

2878. — **Omission to state residence within jurisdiction—Sufficient facts proved before justices.**]

—A summons in bastardy recited that the mother resided at M., within the petty sessional division of B., in the county of N., & an application to a justice usually acting for that division. The summons was read at the hearing, the jurisdiction was not disputed, & the order was made. The order, in reciting the mother's application stated that she resided at M., in the county of N., without stating that M. was within the petty sessional division:—*Held*: the ct., on motion to quash the order after removal by writ of *certiorari*, had jurisdiction to amend the order under Quarter Sessions Act, 1849 (c. 45), s. 7, the facts showing that sufficient grounds were in proof before the justices to have justified them in drawing up the order free from the omission.—*R. v. HIGHAM* (1857), 7 E. & B. 557; 20 L. J. M. C. 116; 29 L. T. O. S. 105; 22 J. P. 6; 3 Jur. N. S. 691; 119 E. R. 1352.

Annotations:—Consd. R. v. De Winton & Taylor (1888), 59 L. T. 382; *R. v. Wood, Ex p. Farwell* (1918), 119 L. T. 48. *Mentd. R. v. Lee* (1888), 58 L. T. 384.

2879. — **Wrong date.**—The mother of a bastard child obtained a summons against deft. in Aug. 1870, but withdrew it when the hearing came on. She obtained a second summons, in which the complaint was stated to have been that day made, in Mar. 1871, & upon the hearing the justices ordered deft., as putative father, to pay for the support of the child from the date of the first summons in Aug. 1870. This order having been brought up by *certiorari*, application was made by complainant to amend this date in the order by inserting instead the date of the second summons:—*Held*: Quarter Sessions Act, 1849 (c. 45), s. 7, gave the ct. no power to make such an amendment, & the order must be quashed.—*R. v. TOMLINSON* (1872), L. R. 8 Q. B. 12; 42 L. J. M. C. 1; 27 L. T. 544; 37 J. P. 678; 21 W. R. 170.

Annotation:—Folld. R. v. Key (1873), 37 J. P. Jo. 309.

2880. — **Wrong amount.**—A single woman

made application on May 22, 1872, under Poor Law Amendment Act, 1844 (c. 101), ss. 2, 3, for a summons in bastardy against K. The child was born on July 26. Bastardy Laws Amendment Act, 1872 (c. 65), passed on Aug. 10, repealed the above sects., but applied only to a child born after Aug. 10. On Sept. 3 the summons was issued, & on Sept. 11 K. appeared to the summons, & an order was made adjudging him to be the putative father, & ordering him to pay three shillings a week for its maintenance from the birth till it should attain the age of thirteen years. On Apr. 24, 1873, Bastardy Laws Amendment Act, 1873 (c. 9), was passed:—*Held*: the above order must be quashed, for that it was not made valid by s. 8 of the Act of 1873, as it was for three shillings a week, whereas s. 3 of the Act of 1844 only authorised an order for 2s. 6d., & the order would not have been valid if the Act of 1872 had not passed.—*R. v. KAY* (1873), L. R. 8 Q. B. 324; *sub nom. R. v. KEY*, 37 J. P. Jo. 309.

See, further, BASTARDY, Vol. III., pp. 406, 407, Nos. 400–405.

2881. **Convictions—Where finding of magistrate unauthorised by charge.**—*R. v. BOLTON*, No. 2775, *ante*.

2882. — **Not in form authorised by statute.**—*R. v. HYDE*, No. 3608, *post*.

2883. —[*J.*—(1) A conviction under Game Act, 1831 (c. 32), s. 30, & Summary Jurisdiction Act, 1848 (c. 43), s. 23, against four defts. for trespass in pursuit of game, contained an order that, if the penalty & costs of conviction were not paid on or before Nov. 10, each of defts. was to be imprisoned for one month, unless those sums & the costs & charges of conveying each of them, so making default, to the common gaol, should be sooner paid. At the hearing before the justices, a *bonâ fide* claim of title to the land was set up on behalf of defts., but no evidence was offered of the actual existence of any dispute, or of any title in the person under whom defts. claimed:—*Held*: the conviction was bad, for that it adjudicated each deft. to be imprisoned for one month, unless the costs & charges of conveying all to gaol should be sooner paid, & it was not in the form authorised by sect. 17 of the Act of 1848, or to the like effect.

(2) *Semble*: the jurisdiction to convict summarily was ousted; the general rule is that, in case of summary convictions, justices have jurisdiction to determine whether the claim to title to real property is set up *bonâ fide*, but, if it is *bonâ fide* set up, they have no jurisdiction to proceed further in the matter.—*R. v. CRIDLAND* (1857), 7 E. & B. 853; 27 L. J. M. C. 28; 29 L. T. O. S. 210; 3 Jur. N. S. 1213; 119 E. R. 1463; *sub nom. R. v. BACON, R. v. CRIDLAND*, 21 J. P. 404; 5 W. R. 679.

Annotations:—As to (1) Refld. R. v. Walker (1881), 45 J. P. 682. *As to (2) Consd. Morden v. Porter* (1860), 7 C. B. N. S. 641. *Distd. Leatt v. Vine* (1861), 30 L. J. M. C. 207. *Consd. Cornwell v. Sanders* (1862), 3 B. & S. 206; *R. v. Stimpson* (1863), 4 B. & S. 301. *Refld. Ex p. Whittaker* (1859), 23 J. P. Jo. 84; *Legg v. Pardoe* (1860), 9 C. B. N. S. 289; *Williams v. Adams* (1862), 2 B. & S. 312; *Hudson v. MacRae* (1863), 4 B. & S. 585; *Raby v. Seed* (1864), 29 J. P. 37; *R. v. Farrer* (1866), 7 B. & S. 554; *Watkins v. Major* (1875), 44 L. J. M. C. 164; *Birnie v. Marshall* (1876), 35 L. T. 373; *Penwarden v. Palmer* (1894), 10 T. L. R. 362; *R. v. French*, [1902] 1 K. B. 637.

2884. —[*J.*—A. was convicted by justices of an offence against the laws of a certain several fishery, but the conviction did not state that the offence was committed by A. "knowingly," so as to bring him within the statute. A. obtained a rule *nisi* for a *certiorari* to bring up the conviction to have it quashed, whereupon, although the conviction had been returned to the clerk of the

peace & filed by him, the justices drew up a fresh conviction, in which the word "knowingly" was inserted, & this fresh conviction was returned as an answer to the rule:—*Held*: the rule for a *certiorari* must be made absolute.—*Ex p. AUSTIN* (1880), 50 L. J. M. C. 8; 44 L. T. 102; 45 J. P. 302, D. C.

Annotation:—*Refd. Ex p. Kenyon* (1881), 45 J. P. 303.

2885. ———.—(1) Deft. was convicted by a metropolitan police magistrate under Public Health (London) Act, 1891 (c. 76), for not abating a nuisance. The conviction imposed a fine & imprisonment with hard labour in default of distress. Deft. paid the fine without appealing to quarter sessions. On *certiorari*:—*Held*: the conviction must be quashed.

(2) On another information under the same Act, for disobeying a closing order, the conviction was in a similar form. Deft. appealed to quarter sessions without paying the fine. The quarter sessions, on evidence that the mention of hard labour in the conviction was due to an oversight on the part of the magistrate's clerk in drawing it up, amended the conviction under Quarter Sessions Act, 1849 (c. 45), affirmed the conviction as amended, & dismissed the appeal. On *certiorari*:—*Held*: the decision of quarter sessions was right.—*R. v. SLADE, Ex p. SAUNDERS, R. v. LONDON JJ., Ex p. SAUNDERS* (1895), 64 L. J. M. C. 273; 72 L. T. 568; 59 J. P. 279; 18 Cox, C. C. 153, D. C.

2886. ———.—*Drawn up in wrong form by mistake.*—*Ex p. KENYON* (1881), 45 J. P. 303, D. C.

2887. ———.—[Appct. was charged before justices with selling milk on two different dates above the price fixed by the Food Controller. The justices intended to convict for one offence only in order to avoid the objection of duplicity of charges in the information. The conviction was drawn up by mistake for the two offences. A rule *nisi* for a writ of *certiorari* to quash the conviction having been obtained:—*Held*: the rule should be made absolute, but on the return of the writ the ct. would have power, under Quarter Sessions Act, 1849 (c. 45), s. 7, to amend the mistake in drawing up the conviction.—*R. v. WOOD, Ex p. FARWELL* (1918), 87 L. J. K. B. 913; 119 L. T. 18; 82 J. P. 268; 62 Sol. Jo. 623; 26 Cox, C. C. 270, D. C.

2888. ———.—*Formal defect in—Conviction under Masters & Servants Act—Prisoner not stated to be present.*—*Ex p. WILLIAMS* (1845), 9 J. P. Jo. 84.

2889. ———.—*Insufficient statement of defendant's acts.*—Deft. was summarily convicted under Conspiracy & Protection of Property Act, 1875 (c. 86), s. 7, the conviction stating that he wrongfully & without legal authority followed informant in a disorderly manner, with two or more other persons in certain streets, with a view to compel him to abstain from doing acts which he had a legal right to do:—*Held*: these acts ought to have been specified in the conviction & it must be quashed.—*R. v. MCKENZIE*, [1892] 2 Q. B. 519; 61 L. J. M. C. 181; 67 L. T. 201; 56 J. P. 712; 41 W. R. 144; 8 T. L. R. 712; 36 Sol. Jo. 667; 17 Cox, C. C. 542; 5 R. 10, D. C.

Annotations:—*Distd. Ex p. Wilkins & Johnson* (1895), 59 J. P. 294. *Consd. Smith v. Moody*, [1903] 1 K. B. 56. *Distd. R. v. Hulme* (1913), 9 Cr. App. Rep. 77. *Refd. Lyons v. Wilkins*, [1899] 1 Ch. 255.

2890. ———.—*Not in accordance with statutory provisions—Reformatory Schools Act, 1893 (c. 48).*—*R. v. BOUNDY* (1904), 68 J. P. Jo. 340, D. C.

2891. ———.—*Jurisdiction not averred.*—*Ex p. GARDNER* (1858), 22 J. P. 369.

2892. ———.—*Amendment under Quarter Sessions Act, 1849 (c. 45).*—Rule calling upon prosecutors to show cause why a record of con-

viction & an order of sessions, made in confirmation thereof, should not be severally quashed for insufficiency.

As to the form of the conviction, some objections have been taken but they have nothing to do with the merits, & if there is anything in them, they may be cured by an amendment under sect. 7 of the above Act, for the affidavits show that sufficient grounds were in proof before the justices to have authorised the drawing up the conviction free from omission or mistake (COCKBURN, C.J.).—*R. v. LUNDIE* (1862), 31 L. J. M. C. 157; 5 L. T. 830; 26 J. P. 646; 8 Jur. N. S. 640; 10 W. It. 267.

Annotation:—*Mentd. R. v. Saddlers' Co.* (1863), 10 H. L. Cas. 404.

2893. ———.—*Variation between copy & original of conviction arising through mistake—Conviction quashed by sessions—Substitution of original on certiorari.*—*R. v. ALLEN*, No. 3039, *post*.

2894. *Coroner's inquisition—Irrelevant additions to.*—*Ex p. SCRATCHLEY* (1844), 2 Dow. & L. 29.

2895. ———.—*Omission & misdescription.*—*Re WARD* (1845), 6 L. T. O. S. 104.

See, further, CORONERS, Vol. XIII., p. 252, Nos. 298 *et seq.*

2896. *Costs of maintaining pauper—Not omission to aver jurisdiction.*—Where an order of justices made within their jurisdiction omitted the venue from the margin, & the statement that they were justices in the jurisdiction, on application for *certiorari*:—*Held*: the order could be amended under Quarter Sessions Act, 1849 (c. 45), s. 7.—*R. v. HELLINGLEY (INHABITANTS)* (1859), 1 E. & E. 749; 28 L. J. M. C. 167; 23 J. P. 628; 5 Jur. N. S. 626; 7 W. R. 413; 120 E. R. 1091.

Annotations:—*Refd. R. v. Bradlaugh* (1875), 43 J. P. 125.

Mentd. R. v. Liverpool, Re Lancaster (1860), 24 J. P. 646.

2897. *Highway order—Payment for repair of roads—Omission to state roads out of repair.*—*R. v. BATTY & STARKIE, WEST RIDING OF YORKSHIRE JJ.* (1847), 11 J. P. Jo. 87.

2898. *Inquisition to assess compensation under private Act—Not superfluous words.*—*Certiorari* will not lie to remove an inquisition to assess damages under compensation clause in a railway aase the warrant contains the superfluous if any.—*R. v. MANCHESTER & PRESTON*

Ry. Co. (1870), 2 L. J. M. C. 200.

2899. *Order of local authority—Town council—Omission to specify districts order applied to.*—*R. v. BATH CORPN.* (1846), 7 L. T. O. S. 67; 10 J. P. Jo. 202.

2900. *Order for poor rate—Irregularity of rate—Statutory direction for rate to be levied in equal proportions.*—Where an Act of Parliament directs a rate to be made on the occupiers of land, etc., & on all persons using & having stocks & personal estates, etc., in equal proportion, according to their several & respective values & estates, & it appears that the rate was not made in equal proportion, it will be quashed.—*R. v. LAKENHAM (INHABITANTS)* (1785), 4 Doug. K. B. 261; 99 E. R. 871.

2901. ———.—*Omission to state quarter sessions were for county—Or specify what costs were ordered for.*—An appeal against a poor rate having been entered & respited, & notice of trial given, it was afterwards countermanded; & the sessions on the application of resps., appts. not appearing, dismissed the appeal with costs; & an order was drawn up, which, after reciting that at the last general quarter sessions holden in & for the county of S. an appeal was made to the ct., dismissed the appeal & ordered applt. to pay to resps. £115 as costs. Upon a motion for a *certiorari* to bring up the order in order to quash it for defects upon its

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face :—*Held* : (1) the order was not bad for giving the amount stated for costs, although it was sworn to be the practice of the sessions to give nominal costs on such occasions, & applts. not being present did not affect the case; (2) the order sufficiently showed that the sessions were held in & for the county of S.; (3) it sufficiently appeared that the terms costs meant the costs of the appeal.—*Ex p. LONDON, BRIGHTON & SOUTH COAST RY. CO.* (1848), 2 Saund. & C. 265; 3 New Mag. Cas. 12; 11 L. T. O. S. 131; 12 J. P. Jo. 358; *sub nom. Ex p. LONDON & BRIGHTON RY. CO. v. LONDON, BRIGHTON & SOUTH COAST RY. CO.*, 17 L. J. M. C. 119; 12 Jur. 897.

2902. Order of removal of pauper—Not absence of legal proof.]—Where an examination, returned to a *certiorari*, was headed, "The examination of V. of the township of S.," & appeared on the face of it to be taken at S., & stated that V. & three children by her deceased husband were chargeable to S.:—*Held* : there appeared sufficient evidence before the justices that V. & her children were inhabiting in S. to give them jurisdiction to remove.—*R. v. ROTHERHAM (INHABITANTS)* (1842), 3 Q. B. 776; 2 Gal. & Dav. 523; 12 L. J. M. C. 17; 6 J. P. 802; 6 Jur. 1085; 114 E. R. 705.

Annotations :—*Expld. Ex p. Brighton Grdns.* (1850), 14 J. P. 639. *Refd. R. v. Buckinghamshire JJ.* (1843), 3 Q. B. 800. *Mentd. Ex p. Tollerton Overseers* (1842), 3 Q. B. 792; *R. v. King's Lynn Recorder* (1846), 3 Dow. & L. 725; *Ormerod v. Chadwick* (1847), 16 M. & W. 367.

2903. —[Since the passing of Poor Law Procedure Act, 1848 (c. 31), an order of removal, or an order of maintenance under 8 & 9 Vict., c. 126, cannot be removed by *certiorari* or quashed simply upon the ground that the examinations upon which it was made contain no legal evidence in support of the order.—*Ex p. BRIGHTHELMSTONE (DIRECTORS, ETC.)* (1850), 4 New Sess. Cas. 298; 15 L. T. O. S. 248; *sub nom. Ex p. BRIGHTON GUARDIANS*, 14 J. P. 639.

2904. — **Not misdescription of parish.]**—(1) Magistrates, in granting orders of removal on examinations not containing sufficient legal evidence, although acting improperly, are not acting without jurisdiction, & therefore the ct. of Q. B. will not grant a *certiorari* to remove such an order, on affidavits setting forth the examinations, in order to inquire into their alleged insufficiency.

(2) A *certiorari* will not be granted to bring up an order of removal of a pauper on the ground that the parish to which the removal takes place is misdescribed.—*R. v. BUCKINGHAMSHIRE JJ.* (1843), 3 Q. B. 800; 2 Gal. & Dav. 560; 12 L. J. M. C. 29; 7 J. P. 97; 7 Jur. 256; 114 E. R. 714.

Annotations :—*As to* (1) *Expld. Ex p. Brighton Grdns.* (1850), 14 J. P. 639. *As to* (2) *Refd. Ormerod v. Chadwick* (1847), 16 M. & W. 367. *Generally, Mentd. R. v. Cheshire JJ., Ex p. Fernyough* (1845), 15 L. J. M. C. 3; *R. v. King's Lynn Recorder* (1846), 15 L. J. M. C. 93.

2905. — **Omission to state jurisdiction.]**—If an order of removal be confirmed at the sessions and both orders be afterwards removed into K. B. by *certiorari* on a case reserved, & this ct. disapprove of the orders, for want of jurisdiction of the removing magistrates appearing on the face of the original order, this ct. will quash both the orders, without remitting the matter back to the sessions to quash the original order.—*R. v. MOOR CRITCHELL (INHABITANTS)* (1802), 2 East, 222; 102 E. R. 354.

Annotations :—*Mentd. R. v. St. Mary's, Leicester* (1818), 1

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r. Failure of former applications.]

—An application for *certiorari* was refused where three former applications had failed, twice in consequence of a defect in the jurat of the affidavit,

H. & Ald. 327; Wainora v. Anthony (1831), 5 Bing. 70; *R. v. Casterton* (1844), 6 Q. B. 507.

2906. —[—*R. v. NORFOLK JJ.* (1845), 9 J. P. Jo. 774.

2907. —[—Where an order of removal had been made having "borough of D." in the margin & reciting a complaint of the overseers of a parish in the borough of D. to two of the justices having jurisdiction within & for the borough & not otherwise showing that the order was made within the jurisdiction. The order was brought up by *certiorari* to be quashed :—*Held* : the order was bad & must be quashed.

A judge's order for a writ of *certiorari* to remove an order of sessions confirming an order of removal, may be granted *ex p.* in the first instance, though a case has not been granted, & the writ issued in vacation.—*R. v. NEWTON FERRERS (INHABITANTS)* (1846), 9 Q. B. 32; 7 L. T. O. S. 203; 10 J. P. Jo. 338; 115 E. R. 1187.

Annotation :—*Apld. R. v. Crowan* (1849), 4 New Mag. Cas. 13.

2908. — **Application not made—Before time for appeal expired.]**—Where an order of removal is bad on the face of it, the ct. will bring it up by *certiorari*, for the purpose of quashing it, although no appeal has been brought & the application for a *certiorari* was not made until after the expiration of the time allowed for appealing.—*R. v. BLATHWAYT* (1846), 3 Dow. & L. 542; 1 Saund. & C. 33; 1 New Mag. Cas. 457; 2 New Sess. Cas. 240; 15 L. J. M. C. 48; 6 L. T. O. S. 377; 10 J. P. 231; *sub nom. R. v. GLOUCESTERSHIRE JJ.*, 10 Jur. 96.

See, further, POOR LAW.

Orders of licensing justices & confirming authority.]—*See INTOXICATING LIQUORS.*

Warrants of commitment & orders of justices.]—*See MAGISTRATES.*

(e) Fraud.

2909. Corruption—Where clearly made out.]—(1) *Semble* : upon motion for a *certiorari* to bring up an order of sessions confirming an order of justices for stopping up a highway, the ct. cannot entertain objections to the validity of the order, whether on the ground of want of jurisdiction, or otherwise, unless such objections arise upon the face of the order itself.

(2) The general rule is, that the ct. will not, on application for a *certiorari*, notice objections raised by affidavit; at least where they might have been brought before the sessions on appeal.

(3) I do not say that if corruption were clearly made out the ct. would not, upon an application like this, declare the order invalidated by the fraud (LORD DENMAN, C.J.).—*R. v. CAMBRIDGESHIRE JJ.* (1835), 4 Ad. & El. 111; 1 Har. & W. 600; 5 Nev. & M. K. B. 440; 3 Nev. & M. M. C. 336; 5 L. J. M. C. 6; 111 E. R. 729.

Annotations :—*Mentd. R. v. Townstall, R. v. Stayley* (1842), 2 Gal. & Dav. 676; *R. v. Hinchliff* (1847), 2 New Mag. Cas. 106; *Colam v. Manfield* (1872), 26 L. T. 661.

2910. Collusion.]—*R. v. GILLYARD*, No. 3088, *post*.

2911. Manifest fraud—Not fraudulent use of legal machinery for winding up.]—*COLONIAL BANK OF AUSTRALASIA v. WILLAN*, No. 3060, *post*.

2912. Concealment of material information.]—*R. v. BRISTOL (RECORDER)*, No. 3128, *post*.

(f) Other Grounds.

2913. Confession of ignorance of law—By chairman of Commissioners of Sewers.]—A *certiorari* will lie to remove a presentment before the Comrs. of Sewers for non-repair of a sea wall, the chairman

& once in consequence of the rule having been improperly granted by a judge at chambers.—*Ex p. LEVINE* (1852), 7 N. B. R. 519.—*CAN.*

on charging the grand jury having confessed he was ignorant of the law applicable to the facts.—*R. v. LEWIS* (1837), Will. Woll. & Dav. 60; 1 J. P. 53; *sub nom.* ANON., 1 Jur. 151.

2914. Obtaining trial surreptitiously—Contrary to practice of sessions—Acquittal of defendant.]—Where deft. surreptitiously obtained his trial at sessions for a misdemeanour, contrary to the practice of the sessions, & was acquitted, this ct. refused to grant a *certiorari* to bring up the indictment, for the purpose of setting aside the verdict.—*R. v. UNWIN* (1839), 7 Dowl. 578.

2915. Improper constitution of tribunal—Sewers jury.]—*R. v. HATFIELD CHASE LEVEL SEWERS COMRS.* (1849), 13 J. P. 284.

2916. — Coal Mines Act, 1911 (c. 50), s. 103 (2).]—Two miners were charged before justices sitting as a ct. of summary jurisdiction with an offence under sect. 74 of the above Act, alleged to have been committed in a mine. The information was dismissed. One of the magistrates who formed the ct. was a person employed in a mine within the meaning of sect. 103 (2) of the Act, but this fact was not known to prosecutor at the time of the hearing, & he did not consent to this magistrate acting as a member of the ct. On an application for a *certiorari* to quash the order dismissing the information:—*Held*: as defts. had been acquitted of the offence charged against them, a *certiorari* to quash the proceedings ought not to be granted.—*R. v. SIMPSON*, [1914] 1 K. B. 66; 83 L. J. K. B. 233; 110 L. T. 67; 78 J. P. 55; 30 T. L. R. 31; 58 Sol. Jo. 99; 23 Cox, C. C. 739, D. C.

Annotation.—*Mentd.* Haynes v. Davis, [1915] 1 K. B. 332.

2917. Order made under invalid bye-law—Imposing penalties on strangers.]—A local Act for the regulation of the common pastures of B. empowered the pasture masters to make bye-laws, & one of these provided that the owner of a horse improperly depastured on the common as well as the person putting the horse there should be liable to a penalty.

Semle: the bye-law which sought to affect strangers who might be entirely ignorant of the same was bad, & *certiorari* would be granted to remove an order made under it.—*R. v. BEVERLEY J.J.* (1861), 25 J. P. 181; *subsequent proceedings*, *sub nom.* *R. v. LUNDIE* (1862), 31 L. J. M. C. 157.

2918. Order removing officer without assigning special ground—Discretion of Poor Law Commissioners.]—The chaplain of a poor law union is a paid officer within Poor Law Amendment Act, 1834 (c. 76), ss. 46 & 48, & so removable by the Poor Law Comrs. as unfit for his office, at their discretion, without assigning any special ground for such removal, & this ct. will not grant a *certiorari* to bring up & review such an order of

removal.—*Ex p. MOLYNEUX* (1863), 27 J. P. 56; 11 W. R. 233.

Orders for payment out of borough or county funds.]—*See* CORPORATIONS, Vol. XIII., pp. 363, 364, Nos. 975–980; LOCAL GOVERNMENT.

Orders of licensing justices & confirming authorities.]—*See* INTOXICATING LIQUORS.

Warrants of commitment & orders of justices.]—*See* MAGISTRATES.

C. Loss of Right to—Acquiescence.

2919. General rule—Conduct of party.]—On application for a *certiorari*, the ct. will take into consideration the conduct of the party applying. *R. v. SOUTH HOLLAND DRAINAGE COMMITTEE MEN* (1838), 8 Ad. & El. 429; 1 Per. & Dav. 79; 1 Will. Woll. & H. 647; 8 L. J. Q. B. 64; 112 E. R. 901.

Annotations.—*Consd.* *R. v. Manchester & Leeds Ry.* (1838), 1 Per. & Dav. 164. *Refd.* *R. v. Swansea Harbour Trustees* (1839), 8 Ad. & El. 439; *R. v. Salop J.J.* (1859), 29 L. J. M. C. 39; *R. v. Surrey J.J.* (1870), L. R. 5 Q. B. 466; *R. v. Sheward* (1880), 5 Q. B. D. 179; *R. v. Williams*, *Ex p. Phillips*, [1914] 1 K. B. 608. *Mentd.* *Taylor v. Clemson* (1844), 11 Cl. & Fin. 610; *T. v. Stainforth* (1847), 11 Q. B. 66.

2920. Acquiescence—In irregular procedure—Notice of trial not served.]—Where an appeal against an order of removal has been tried with the acquiescence of applts. & resps., & the order quashed, a *certiorari* to remove the proceedings for the purpose of quashing the order of sessions will not be granted, although resps. received no notice of trial, as required by a rule of ct. of the sessions, & were consequently wholly unprepared for the trial.—*R. v. EAST RIDING OF YORKSHIRE J.J.* (1834), 3 Nev. & M. K. B. 93; 2 Nev. & M. M. C. 80.

2921. — In jurisdiction of court below.]—Cause being shown against a rule *nisi* for a distress warrant against C. for non-payment of church rates, the affidavit in support of the rule stated that at the hearing neither C. nor his attorney objected to the jurisdiction. The affidavit of C., in answer alleged that throughout he *bond fide* objected to the validity of the rate, & that at the hearing he did so object, & that some of the grounds of his objection were stated to the justices, & that they were told that if they made an order no civil or ecclesiastical court would uphold their decision. It appeared from both sets of affidavits that the cross-examination by C.'s attorney had been directed to the validity of the rate:—*Held*: (1) the conclusion to be drawn from the statements in the affidavits was, that the notice of the fact of C. *bond fide* disputing the validity of the rate had been given to the justices, that thereupon they ought to have foreborne giving judgment, & therefore the rule must be discharged; (2) as it appeared that there had been a concurrence on

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2919 i. General rule—Conduct of party.]—Where deft. knows all the facts before the trial, but nevertheless, argues the case & obtains an opinion from the judge, the case should not be removed, even though the judge desire it should be disposed of in the superior ct.—*HOLMES v. REMVE* (1869), 5 P. R. 58.—CAN.

2919 ii. — Admission of guilt by defendant.]—The ct. refused to grant a *certiorari* to remove a conviction, where deft. had appeared & pleaded guilty.—*Ex p. BARBERIE* (1892), 31 N. B. R. 368.—CAN.

2919 iii. ——When a person committed as a dangerous lunatic allowed two assizes & two quarter

sessions to pass without applying for his discharge, & a period of over nine months to elapse between his commitment & his application for discharge, this is such laches & delay, as precludes appt. from obtaining a *certiorari*.—*R. v. RIALI* (1860), 11 I. C. L. R. 279; 12 Ir. Jur. 118.—IR.

2919 iv. ——*R. v. VALUATION COMR. & GREAT SOUTHERN & WESTERN RY. CO.*, [1902] 2 I. R. 697; 36 I. L. T. 105.—IR.

2920 i. Acquiescence—In irregular proceedings—Irregularities in service of warrant.]—Where a party pleads to a warrant of arrest & is convicted he cannot afterwards make alleged irregularities in the service of the warrant a ground for *certiorari*.—*MARION v. MARION* (1879), 2 L. N. 180.—CAN.

2921 i. — In jurisdiction of court below.]—It is too late to apply for a *certiorari* after an apparent acquiescence in the jurisdiction of the ct.—*STARR v. HEALES* (1882), 4 Il. & G. 84.—CAN.

2921 ii. ——Where at the hearing, no objection was taken to the constitution of the inferior ct. the superior ct. must be satisfied that there was no waiver of such objection before it will exercise the discretionary jurisdiction of *certiorari* to quash the order made below on the ground of bias or other illegal constitution of the inferior ct. The absence of waiver may be inferred from facts showing that the parties were surprised.—*R. v. CORK J.J.* (1906), 40 I. L. T. 121.—IR.

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E.; su*

C.'s part in the act of the justices, the ct. would not, in such case, have granted a *certiorari* to quash the order, & therefore the rule must be discharged without costs.—*R. v. LEICESTER JJ. & COMPTON* (1860), 29 L. J. M. C. 203; 2 L. T. 436; 24 J. P. 391; 8 W. R. 563.

Annotation:—As to (1) Distd. R. v. Knox (1863), 32 L. J. M. C. 257.

2922. ———.]—If a person summoned before justices for non-payment of a church rate submits certain objections to the validity of the rate to the justices for decision, & they overrule the objections & order payment, the ct. will not grant a *certiorari* to bring up the order for the purpose of having it quashed.—*R. v. KNOX* (1863), 32 L. J. M. C. 257; 8 L. T. 330; 27 J. P. 327; 11 W. R. 703.

2923. ———.]—An application for an order in bastardy was made to certain justices of the county of S., & dismissed by them, on the ground that there was no sufficient corroborative evidence of the mother's story. The mother afterwards renewed her application before other justices, who made an affiliation order. It was not objected before the justices on this second hearing, that the case had been disposed of on the merits on the former occasion, & that they were bound by that decision. Under these circumstances, the ct. refused to issue a writ of *certiorari* to bring up the order, with a view to its being quashed.—*R. v. HERRINGTON* (1864), 3 New Rep. 468; 12 W. R. 420; *sub nom.* *R. v. HARRINGTON*, 9 L. T. 721; 28 J. P. 485.

Annotations:—Consd. R. v. Gaunt (1867), L. R. 2 Q. B. 466; *R. v. Glynn* (1871), L. R. 7 Q. B. 16. *Refd. Re West London Philanthropic Burial Soc., Cordery v. Greaves* (1869), 20 L. T. 972.

2924. ———.]—The rules of the W. friendly society did not provide that disputes should be referred to justices, but on a dispute the member proceeded before justices, & the secretary of the society did not call the justices' attention to this want of jurisdiction under 21 & 22 Vict., c. 101, s. 5, & an order was made on the society to pay money:—*Held*: the society was not entitled to a *certiorari* to quash the order, having by their conduct acquiesced in the jurisdiction.—*R. v. WEST LONDON PHILANTHROPIC BURIAL SOCIETY, CORDERY v. GREAVES* (1869), 20 L. T. 972; 33 J. P. 614.

2925. ———.]—On an information & summons charging the deft. with unlawfully exposing to view in a window, a certain indecent exhibition, this being an offence for which a penalty of 40s. may be imposed under Town Police Clauses Act, 1847 (c. 89), s. 28, it was stated on behalf of the prosecution at the hearing that the proceedings were taken under Vagrancy Act, 1824 (c. 83), under which, as amended by Vagrancy Act, 1838 (c. 38), s. 2, the offence of "wilfully" exposing such an exhibition to public view in the window of any shop, situate in any street, is punishable with a fine of £25, but objection was not taken before the justices on behalf of the deft. to the absence of the word "wilfully" from the summons. The justices convicted the deft. of "unlawfully wilfully exposing an indecent exhibition to public view," & fined him £20, & signed the conviction, but did not seal it with their seals:—*Held*: the ct. would not quash the conviction by *certiorari*, as the objection was not taken at the hearing, & no information was required provided the deft. was before the justices, & as the ct. had power under the Quarter Sessions Act, 1849 (c. 45), s. 7, to amend the conviction with regard to the omission of the seals of the justices.—*R. v. TABRUM, Ex p.*

DASH (1907), 97 L. T. 551; 71 J. P. 325; 23 T. L. R. 474; 21 Cox, C. C. 529, D. C.

2926. Order already acted upon.]—*R. v. NEWBOROUGH*, No. 2778, *ante*.

Assessment of compensation on compulsory purchase of land.—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 209, Nos. 902-918.

D. Statutory Restrictions.

See Sect. 7, *post*.

F. Procedure.

See Sect. 9, sub-sect. 3, *post*.

SUB-SECT. 3.—FOR JUDGMENT ON INDICTMENTS.

2927. General rule.—H., being indicted & committed, obtained a *certiorari* to remove the indictment into the K. B. The Attorney-General moved for a *procedendo* saying that it was inconvenient that *certiorari* should be granted after conviction & before judgment:—*Held*: a *certiorari* was not proper after conviction unless where error did not lie, or a fine ought to be set in the K. B.

Upon a conviction at assizes if the judge of assize doubt of the judgment, he may remove record into this ct. by *certiorari* (HOLT, C.J.).—*R. v. PORTER* (1703), 1 Salk. 149; 91 E. R. 138; *sub nom.* *R. v. POTTER*, 2 Ld. Raym. 937; *sub nom.* *R. v. BETHELL*, 6 Mod. Rep. 17; *sub nom.* *R. v. BOTHEL*, Holt, K. B. 157; Sett. & Rem. Cas. 222.

Annotation:—Refd. R. v. Jackson (1795), 6 Term Rep. 145.

2928. ———.]—There is no doubt that, at common law, where the punishment is not discretionary, the record of an inferior ct. may be removed into this ct., & we may pronounce judgment (ABBOTT, C.J.).—*R. v. KENWORTHY* (1823), 1 B. & C. 711; 107 E. R. 261.

Annotations:—Mentd. R. v. Ellis (1826), 5 B. & C. 395; *R. v. Carille* (1831), 2 State Tr. N. S. 459; *R. v. Neville* (1831), 2 B. & Ad. 299; *R. v. Bourne* (1837), 7 Ad. & El. 58; *King v. R.* (1845), 7 Q. B. 795; *Drury v. R.* (1849), 13 J. P. 70.

2929. Where judge uncertain of nature of offence & proper punishment to be awarded.—*R. v. PORTER*, No. 2927, *ante*.

2930. After special verdict—Facts found insufficient to make prisoner guilty of murder.—A special verdict was found at the Old Bailey on an indictment for murder, & the record of this indictment & special verdict was removed into the King's Bench by *certiorari*:—*Held*: on a special verdict in a criminal case the ct. could make no inference with respect to facts not found, they could only judge on the facts found, & if such verdict found all the facts it did find positively, & they did not constitute the crime of which the party was indicted, he must be acquitted.—*R. v. HUGGINS* (1730), 2 Ld. Raym. 1574; 1 Barn. K. B. 396, 416; Fitz-G. 177; 2 Stra. 882; 92 E. R. 518.

Annotations:—Refd. R. v. Winsor (1866), 10 Cox, C. C. 276. *Mentd. R. v. Burridge* (1735), 3 P. Wms. 439; *R. v. Francis* (1735), Cunn. 165; *Wilkinson v. Salter & Perry* (1736), Lee temp. Hard. 310; *R. v. Bray* (1737), Lee temp. Hard. 358; *A.-G. v. Allgood* (1743), Park. 1; *Soot v. Shepherd* (1773), 3 Wils. 403; *R. v. Caldwell* (1801), For. 67; *Jones v. Nicholls* (1829), 3 Moo. & P. 12; *R. v. Lea* (1837), 2 Mood. C. C. 9; *A.-G. v. Donaldson* (1841), 7 M. & W. 422; *May v. Burdett* (1846), 16 L. J. Q. B. 64; *Campbell & Haynes v. R.* (1847), 2 Cox, C. C. 463; *R. v. Murphy* (1869), L. R. 3 P. C. 535; *Brooklebank v. Manton* (1922), 39 T. L. R. 112.

2931. — Not on indictment for misdemeanour.]

Sect. 6.—Purposes of the writ: Sub-sect. 4, B.; sub-sects. 5, 6 & 7.]

2951. ———.]—*Re SMITH, Ex p. HAMS-THWAIT OVERSEERS* (1844), 4 L. T. O. S. 121.

2952. ———.]—Where a party bound, at quarter sessions, in recognisances to keep the peace, is afterwards convicted at the petty sessions of an assault, in order to estreat the recognisances, it is necessary to bring them up by *certiorari*, & proceed thereon by *sci. fa.*—*Re WHITE* (1844), 1 New Sess. Cas. 9.

2953. ———.]—*R. v. CRESPIN* (1848), 12 J. P. Jo. 442.

2954. ———.]—*Re THORNTON* (1850), 4 Exch. 820; 14 L. T. O. S. 378; 14 J. P. 97; 154 E. R. 1448; *sub nom. R. v. THORNTON*, 1 L. M. & P. 192; 19 L. J. M. C. 113.

2955. ———.]—*At assizes.*—*R. v. BROOKE* (1894), 59 J. P. 6; 11 T. L. R. 163, D. C.

2956. ———.]—For the purpose of an application to estreat a recognisance given at assizes, a rule *nisi* for a *certiorari* is not necessary, but the ct. can direct the clerk of assize &, if an appeal to the Ct. of Criminal Appeal has been entered, the registrar of that ct., to file the indictment & record in the Crown Office, & can order deft. to appear on a stated date in the K. B. Div. & there show cause why the recognisance should not be estreated.—*R. v. CHAMBERS, Ex p. KLITZ*, [1919] 1 K. B. 638; 88 L. J. K. B. 688; 35 T. L. R. 328, D. C.

2957. ———.]—*To pay costs of appeal.*—*R. v. SWAN-COTT, Ex p. NEWTOWN UNION GUARDIANS* (1848), 12 J. P. Jo. 88.

2958. *To discharge recognisance.*—A motion for a *certiorari* to remove a recognisance was not granted as never having been the practice, but a rule to show cause why the clerk of the peace should not discharge the recognisance on payment of the fees was granted instead.—*ANON.* (1773), *Lofft*, 321; 98 E. R. 673.

2959. ———.]—*R. v. ENGLAND* (1855), 24 L. T. O. S. 237; 19 J. P. Jo. 98.

2960. ———.]—Deft. was arrested & taken before a magistrate on a charge of using threats towards O. The magistrate after hearing the evidence of O., refused, on the application of deft., to adjourn the case, & compelled him at once to enter into recognisances to keep the peace towards O. for twelve months. Deft. subsequently brought an action against O. for a malicious prosecution, & recovered damages. He then applied to the ct. for a *certiorari* to remove the recognisances & information, in order that the recognisances might be discharged:—*Held*: the *certiorari* should not be granted, as he had already vindicated his character by recovering damages for the malicious prosecution, & further, as the magistrate had acted on an information on oath, & the ct. could not interfere.—*R. v. GROVES* (1863), 8 L. T. 311.

2961. *Quarter Sessions Act, 1849 (c. 45), s. 18.—Whether writ of certiorari necessary.*—The proper mode of removing an order of sessions into this ct., in order to enforce it, under the above sect., is by writ of *certiorari*.—*R. v. DEVONSHIRE JJ.* (1850), 1 L. M. & P. 520; 4 New Mag. Cas. 108; 15 L. T. O. S. 260.

Annotation:—N.F. R. v. Field (1850), 16 L. T. O. S. 130.

2962. ———.]—*HAWKER v. FIELD*, No. 2426, ante.

2963. ———.]—Where the object of removing an order of a ct. of quarter sessions into the Ct. of Q. B. is to enforce such order, the proper course is to apply for a rule under sect. 18 of the above Act, but if it is sought to quash the order, the

application should be for a *certiorari*.—*HUNTLEY v. BINBROOK (CHURCHWARDENS)* (1853), 21 L. T. O. S. 144; 17 J. P. Jo. 374; *sub nom. Re BINBROOKE APPEAL*, 1 W. R. 388.

2964. ———.]—*Indictment for nuisance.*—Sect. 18 of the above Act, which enables the Ct. of Q. B. to enforce an order of sessions if removed & made a rule of ct., does not apply to a judgment to remove a nuisance upon an indictment at sessions for such nuisance.—*R. v. BATEMAN* (1857), 30 L. T. O. S. 157; 21 J. P. 759; *subsequent proceedings*, 8 E. & B. 584.

2965. *To levy fine—Imposed at assizes.*—Where judgment had been given on circuit for a fine & an application was made to the Div. Ct. for a writ to levy the fine:—*Held*: the record must be brought into ct. by *certiorari*.—*R. v. STEVENTON PARISH* (1885), 1 T. L. R. 395, D. C.

Procedure, *see Sect. 9, sub-sect. 4, B., post.*

SUB-SECT. 5.—TO REMOVE ORDERS, ETC. ON CASE STATED.

2966. *Where doubtful if case stated.*—*R. v. SOUTHAMPTON JJ.* (1848), 12 J. P. Jo. 772.

2967. *Where case granted out of court—Without authority.*—A chairman of quarter sessions has no power to state a case for the opinion of this ct. upon appeal against an order of removal after the sessions are over, unless the power to do so has been distinctly reserved to him by the ct. of quarter sessions with the consent of all parties, & if a case so granted is brought up by *certiorari*, the ct. will quash the writ & return, unless it clearly appears by the affidavits that the power to state the case was so given.—*R. v. BASING (INHABITANTS)* (1849), 3 New Mag. Cas. 161; 13 L. T. O. S. 281; 13 J. P. Jo. 282, 393.

2968. *Unnecessary delay in stating case.*—As the case was pending when the rule *nisi* for the *certiorari* was obtained, we ought not to make it absolute, but having regard to the unnecessary delay in stating the case, I think this rule should be discharged, without costs (COCKBURN, C.J.).—*PALMER v. THATCHER* (1878), 3 Q. B. D. 346; 37 L. T. 784; 42 J. P. 213; 26 W. R. 314; *sub nom. R. v. BRISTOL JJ., PALMER v. THATCHER*, 47 L. J. M. C. 54, D. C.

2969. *Under Summary Jurisdiction Act, 1879 (c. 49), s. 40.*—Sect. 40 of the above Act renders a writ of *certiorari* unnecessary to bring up a case stated by sessions on a rating appeal.—*CLARK v. ALDERBURY UNION ASSESSMENT COMMITTEE* (1880), 50 L. J. M. C. 33; 45 J. P. 358; 29 W. R. 334, D. C.

Annotation:—Mentd. Dodds v. South Shields Poor Law Union Assmt. Com. (1895), 64 L. J. Q. B. 508.

Procedure, *see Sect. 9, sub-sect. 5, post.*

SUB-SECT. 6.—TO REMOVE DEPOSITIONS FOR BAIL.

2970. *To coroner.*—*R. v. MASSEY* (1817), 6 M. & S. 108; 105 E. R. 1183.

2971. ———.]—When the Ct. of K. B. grants a *habeas corpus* that prisoner may be admitted to bail for a crime of which he had been found guilty on a coroner's inquisition, they always direct a *certiorari* to issue, to bring the depositions into that ct.—*R. v. GITRUS* (1824), 3 L. J. O. S. K. B. 55.

2972. ———.]—*Ex p. PARKER* (1843), 1 L. T. O. S. 260.

2973. ———.]—*Ex p. BOWKER* (1843), 1 L. T. O. S. 82.

2974. —.]—*Ex p.* STEPHENSON (1843), 1 L. T. O. S. 112.

2975. —.]—*Ex p.* ARNALL (1844), 8 L. T. O. S. 208.

2976. —.]—*R. v.* LÆDBITTER (1847), 11 J. P. Jo. 450.

See, also, CORONERS, Vol. XIII., pp. 258, 259, Nos. 385-390.

2977. Charge of felony—Prisoners of good character.]—Where goods were found in the possession of prisoners after they had had a private interview with the owner at his request, & for the purpose of inducing them to deal with him, & when it appeared that the prisoners were highly respectable men, & bore good characters for honesty & integrity, & that the owner of the goods was a pedlar, largely engaged in smuggling transactions, the ct. granted a *certiorari* to remove the deposition into the Q. B. & a *habeas corpus* to bring up prisoners, in order that they might be admitted to bail.

The affidavits for removing criminal proceedings into this ct. should be intitled "In the Q. B." only, & where they were entitled "In the Q. B., The Queen on the prosecution of L. against W. & F., for felony," the ct. ordered the affidavits to be amended, & resworn.—*Re* DRENHAM & CLAYTON (1839), 3 J. P. 706.

2978. Writ not granted to promote trial.]—We grant this writ [of *certiorari*] for the purpose of ascertaining whether a party is entitled to be bailed, but not for the purpose of promoting the trial of a party (LORD DENMAN, C.J.).—*Re* DEAN (1842), 6 Jur. 149.

2979. Where offence committed.]—*R. v.* BECK (1845), 9 J. P. Jo. 773.

2980. Evidence conflicting.]—*R. v.* ROBINSON (1851), 15 J. P. Jo. 129.

2981. Evidence consistent with innocence.]—*R. v.* BROWN (1852), 18 L. T. O. S. 248; 16 J. P. Jo. 86.

2982. —.]—*R. v.* PORTER (1854), 24 L. T. O. S. 99; 18 J. P. Jo. 743; *subsequent proceedings*, 24 L. T. O. S. 119.

Procedure, *see* Sect. 9, sub-sect. 6, *post*.

SUB-SECT. 7.—TO REMOVE RECORD FOR USE AS EVIDENCE.

See, now, R. S. C., Ord. 37, r. 4.

2983. For information of court.]—After *in nullo est erratum* the ct., to inform their consciences, may award a *certiorari* to amend the record.—WINCHOMB *v.* GODDARD (1601), Cro. Eliz. 836; 78 E. R. 1063.

*Annotations:—**Re*ld. Carlton *v.* Mortagh (1704), 1 Salk. 268. *Mentd.* Phillips *v.* Bury (1694), 1 Ld. Raym. 5.

2984. —.]—COXE *v.* CROPWELL (1603), Cro. Jac. 5; 79 E. R. 5.

*Annotations:—**Re*ld. Carlton *v.* Mortagh (1704), 1 Salk. 268. *Mentd.* Ashmond *v.* Ranger (1700), Holt, K. B. 162.

2985. —.]—CARLTON *v.* MORTAGH (1704), 1 Salk. 268; 91 E. R. 235.

*Annotation:—**Re*ld. Bareley *v.* Howard (1731), 2 Barn. K. B. 5.

2986. —.]—If to a writ of error on a *sci. fa.* against bail, defendant plead *in nullo est erratum*, & assign the want of a *sci. fa.* for error, the plea is a confession of the error, but the ct. may award a *certiorari* for the information of the ct.—LAWN

v. SAWBRIDGE (1707), 11 Mod. Rep. 143; 88 E. R. 953.

2987. —.]—FRANKLYN *v.* REEVE (1735), 2 Stra. 1023; *Lee temp. Hard.* 118; 93 E. R. 1009. *Annotations:—**Mentd.* Goodright *v.* Hodgson (1738), Andr. 282; Hall *v.* Douglas (1744), 7 Mod. Rep. 489; Richardson *v.* Mellish (1825), 3 Bing. 346.

2988. —.]—Amendment by adding continuances cannot be made in a record transcribed without some record to amend by, but the ct. will grant a *certiorari* to send for the continuances.—*R. v.* PONSONBY (1751), 1 Wils. 303; 95 E. R. 631. *Annotation:—**Mentd.* Williams *v.* Bagot (1824), 4 Dow. & Ry. K. B. 315.

2989. —.]—Where an indictment for forcible entry found at the quarter sessions had been quashed by a subsequent sessions the ct. granted a *certiorari* to bring up the indictment, in order that the ct. might see what had been done upon it at the sessions, it not appearing whether it had been quashed by a regular judgment, so as to enable prosecutor to bring a writ of error on the judgment.—*R. v.* WILSON (1844), 6 Q. B. 620; 1 New Mag. Cas. 163; 1 New Sess. Cas. 427; 14 L. J. M. C. 3; 4 L. T. O. S. 153; 9 J. P. 167; 115 E. R. 233; *sub nom.* *R. v.* GLOUCESTERSHIRE JJ., *R. v.* WILSON, 8 Jur. 1069.

2990. —.]—Where pltf. in an inferior ct. had, as it was alleged, issued execution more than a year & a day after judgment, without a *sci. fa.*, & deft. was thereupon taken in custody, on motion for a *habeas corpus* to discharge deft. on the ground of the above defect:—*Held*: the ct. had no power to grant a *certiorari* to bring up the record; the general rule being that no *certiorari* could issue to bring up the record of an inferior ct. after judgment.—KEMP *v.* BALNE (1844), 1 Dow. & L. 885; 13 L. J. Q. B. 149; 8 J. P. 506; 8 Jur. 619; *sub nom.* *Ex p.* BALNE, 2 L. T. O. S. 354.

2991. —.]—*R. v.* — (1853), 21 L. T. O. S. 166.

2992. Return under seal of inferior court sufficient.]—BUTCHER & ALDWORTH'S CASE (1601), Cro. Eliz. 821; 78 E. R. 1047.

2993. Tenor of record sufficient.]—WOODCRAFT *v.* KINASTON, No. 2431, *ante*.

2994. Certified record faulty.]—Upon a writ of error from the C. P., if the record certified be faulty, of common right a *certiorari* may go to certify the right record (HOLT, C.J.).—ANON. (1699), 12 Mod. Rep. 317; 88 E. R. 1348.

2995. To bring up record of conviction—Where action had for same offence.]—*R. v.* MIDLAM (1765), 3 Burr. 1720; 97 E. R. 1064.

2996. To bring up record of acquittal—In action for malicious prosecution.]—Motion for a *certiorari* to bring up the record of the acquittal of the pltf. on a charge of felony at sessions. This was an action for malicious prosecution, in charging the pltf. with a felony, upon which he was acquitted, to which the deft. pleaded *nul tiel record*, upon which issue was joined, & the *certiorari* was sought to bring up the record, in order that the issue might be tried by its production:—*Held*: a *certiorari* would be granted.—JACKSON *v.* OAKS (1847), 10 L. T. O. S. 116; 11 Jur. 1105; *sub nom.* *R. v.* DURHAM JJ., JACKSON *v.* OAKS, 11 J. P. Jo. 806.

2997. Variance between record brought up & original information.]—WILKES *v.* R. (1768), Macqueen's Practice of House of Lords, p. 401; *subsequent proceedings, sub nom.* *R. v.* WILKES (1770), 4 Burr. 2527.

(1832), Glascock, 137.—IR.

2998 *il.* —.]—*Re* DILLON *v.* FARRELL (1834), 2 Ir. L. Rec. N. S. 147.—IR.

PART IX. SECT. 6, SUB-SECT. 7.

2993 *il.* For information of court.]—When the record of one ct. is required

for inspection by another the proper course is by *certiorari* & *mittimus* on which a transcript of the record goes to the other ct.—JACKSON *v.* M'NULTY

Sect. 6.—Purposes of the writ: Sub-sect. 8. Sect. 7: Sub-sects. 1 & 2, A. & B.]

SUB-SECT. 8.—OTHER PURPOSES.

2998. Not to remove order of imprisonment.]—No *certiorari* will lie to remove this order. It is an order of imprisonment, & I know of no instance of such an order being removed by *certiorari* (LORD KENYON, C.J.).—*R. v. BOWEN* (1793), 5 Term Rep. 156; *Nolan*, 186; 101 E. R. 89.
Annotation:—*Mentd. Wilkins v. Wright* (1833), 2 Cr. & M. 191.

2999. To inferior court—To return practice of court.]—*Certiorari* issued to the judge of an inferior jurisdiction to return the practice of his ct.—*WILLIAMS v. BAGOT* (LORD) (1824), 4 Dow. & Ry. K. B. 315; 2 L. J. O. S. K. B. 152.

Annotations:—*Refd. R. v. Coles* (1845), 8 Q. B. 75. *Mentd. R. v. Maidenhead Corpn.* (1882), 9 Q. B. D. 494.

3000. — To certify custom.]—Upon a custom of the City of London being put in issue, the mayor & aldermen are commanded by *certiorari*, reciting that it pertains to the recorder to try the truth of the issue & to certify the custom, to certify whether there is such a custom as that alleged, & upon the recorder certifying in open ct., the existence or non-existence of the custom pleaded, judgment is entered pursuant to such certificate.—*CROSBY v. HETHERINGTON* (1842), 4 Man. & G. 933; 5 Scott, N. R. 637; 12 L. J. C. P. 261; 134 E. R. 383.

Annotations:—*Refd. R. v. Exeter Bp.* (1850), 14 J. P. Jo. 351. *Mentd. Day v. Panpierre* (1849), 13 Q. B. 802; *Morris v. Lautour* (1864), 9 L. T. 767; *London Corpn. v. Cox* (1867), L. R. 2 H. L. 239.

be amended by consent.]—*Ex p. GREAT WESTERN Ry. Co.* (1852), 18 L. T. O. S. 263.

SECT. 7.—STATUTORY RESTRICTIONS.

SUB-SECT. 1.—IN CIVIL PROCEEDINGS.

See 43 Eliz. c. 5; 21 Jac. 1, c. 23, ss. 2, 4, 5, 6; *Frivolous Arrests Act*, 1725 (c. 29), s. 3; *Inferior Courts Act*, 1779 (c. 70), ss. 5, 6; *Imprisonment for Debt Act*, 1827 (c. 71), s. 6; *Borough & Local Courts of Record Act*, 1872 (c. 86); & *C. O. R.*, rr. 13, 14, 15, 17, 20–30.

3003. General rule—Writ issues as of right at common law—Restrictions imposed by statutes.]—*EDWARDS v. LIVERPOOL CORPN.*, No. 2491, *ante*.

Whether writ discretionary or as of course.]—*See* Sect. 5, *ante*.

3004. Removal for trial—General rule.]—*SYMONDS v. DIMSDALE*, No. 2489, *ante*.

3005. —.]—*LILLEY v. DORIN*, No. 2490, *ante*.

3006. —.]—*Semble*, an action brought in the Mayor's Ct. to recover more than £50 cannot be

removed as a matter of right by writ of *certiorari* into the Q. B. Div., but it is a matter for the discretion of the ct.—*HOPE v. HUME-WEBSTER* (1886), 11 Q. B. 415, D. C.

3007. — Borough & Local Courts of Record Act, 1872 (c. 86), Sched., r. 12—Cause “fit to be tried” in High Court—What amounts to “fit to be tried.”]—A party to an action in the Mayor's Ct. is not entitled as of right to remove the action by writ of *certiorari* into the High Ct., but can only do so by leave of a judge of the High Ct. in a case where it shall appear to him that the action is one which is fit to be tried there.

I think that there is no way out of the very clear language of r. 12, & that the right to remove a case by *certiorari* as of right has been long taken away (*MATHEW, J.*).—*CHERRY v. ENDEAN* (1886), 55 L. J. Q. B. 292; 54 L. T. 763; 34 W. R. 458, D. C.

Annotations:—*Folld. Simpson v. Shaw* (1886), 56 L. J. Q. B. 92. *Consd. Banks v. Hollingsworth*, [1893] 1 Q. B. 442.

3008. —.]—*SIMPSON v. SHAW*, No. 2508, *ante*.

3009. —.]—*BANKS v. HOLLINGSWORTH*, No. 2509, *ante*.

3010. — Liverpool Borough Court (Removal of Actions) Act, 1842 (c. 111), ss. 2 & 3—Liverpool Court of Passage Act, 1893 (c. 37), s. 5.]—*EDWARDS v. LIVERPOOL CORPN.*, No. 2491, *ante*.

— Recognisance on.]—*See* Sect. 9, sub-sect. 2, C., *post*.

County courts.]—*See* COUNTY COURTS, Vol. XIII., pp. 543–546, Nos. 968–1010.

Mayor's Court.]—*See* MAYOR'S COURT, LONDON. **Removal of indictments for trial—Grounds for.]**

SUB-SECT. 2.—CERTIORARI WHOLLY TAKEN AWAY.

A. By What Words taken away.

3011. General rule.]—The rule of law is, that although a *certiorari* lies, unless expressly taken away, yet an appeal does not lie unless expressly given by statute (*ABBOTT, C.J.*).—*R. v. HANSON* (1821), 4 B. & Ald. 519; 106 E. R. 1027.

Annotations:—*Refd. R. v. Stock* (1838), 8 Ad. & El. 405; *Furtado v. City of London Brewery Co.*, [1914] 1 K. B. 709. *Mentd. Ash v. Lynn* (1866), L. R. 1 Q. B. 270; *R. v. Surrey JJ.* (1869), 18 W. R. 166; *R. v. Dickinson, Ex p. Davis* (1909), 102 L. T. 48.

3012. Only by express negative words.]—*R. v. PLOWRIGHT*, No. 3018, *post*.

3013. —.]—*ANON.* (1729), 1 Barn. K. B. 245; 94 E. R. 167.

3014. —.]—*Certiorari* cannot be taken away by any general, but only by express negative words.—*R. v. MORELEY, R. v. OSBORNE, R. v. REEVE, R. v. NORRIS* (1760), 2 Burr. 1040; 1 Wm. Bl. 231; 97 E. R. 696.

Annotations:—*Expld. Walker v. Gann* (1826), 7 Dow. & Ry. K. B. 769. *Refd. R. v. Walsall Overseers* (1878), 3 Q. B. D. 457.

PART IX. SECT. 7, SUB-SECT. 2.—A.

3012 I. Only by express negative words.]—*Re BIEL* (1892), 18 V. L. R. 456.—*AUS.*

3012 II. — Not by words merely providing an appeal.]—The power given to a judge to hear appeals from summary convictions before justices of the peace, does not take away the right of the ct. to grant a *certiorari* to remove such convictions.—*Ex p. MONTGOMERY* (1856), 8 N. B. R. 149.—*CAN.*

3012 III. —.]—*R. v. VROOMAN* (1886), 3 Man. L. R. 509.—*CAN.*

PART IX. SECT. 6, SUB-SECT. 3.

a. Not to remove judgment of inferior court—To correct opinion of judge in matter of law.]—Where in consequence of an erroneous opinion in a matter of law deft. is acquitted *certiorari* at suit of prosecutor does not lie.—*R. v. RYALL* (1826), Batt. 583.—*IR.*

t. Whether to remove stay of execution on judgment of Supreme Court.]—*SEWELL v. BRITISH COLUMBIA TOWING CO.* (1883), Cass. Dig. 266, 388.—*CAN.*

a. Whether to arbitrate — To remove award good on its face.]—Where a matter is within the jurisdiction of arbitrators & their award is good on its face their decision is final & *certiorari* will not lie.—*Re MARITIME COAL & RY. CO. & ELDERKIN* (1907), 2 E. L. R. 284.—*CAN.*

PART IX. SECT. 7, SUB-SECT. 1.

3005 I. Removal for trial.]—Whether *certiorari* taken away by R. S., c. 137.—*Ex p. ELLIS* (1867), 8 N. B. R. 601.—*CAN.*

3015. —[—]—*R. v. ABBOT* (1783), 2 Doug. K. B. 553, n.; 99 E. R. 849, n.
Annotations:—Refd. *R. v. Eaton* (1787), 2 Term Rep. 89. *Mentd.* *R. v. Chandler* (1811), 14 East, 267; *R. v. Winsor* (1866), 14 L. T. 195.

3016. —[—]—*R. v. CASHIOBURY HUNDRED JJ.*, No. 2871, ante.

3017. — *Where writ lies at common law.*—*R. v. HUNT*, No. 3022, post.

3018. Not by words directing cause "to be finally determined"—By magistrate.]—A statute imposing a duty to be levied by distress, "& if any dispute arise about taking the distress, the same to be finally determined by a justice of the peace," means only that it shall be final as to matter of fact, & does not take away a *certiorari*.

The statute does not mention any *certiorari*, which shows that the intention of the law makers was that a *certiorari* might be brought, otherwise they would have enacted, as they have done by several other statutes, that no *certiorari* shall lie (*per Cur.*).—*R. v. PLOWRIGHT* (1086), 3 Mod. Rep. 94; 2 Show. 458; 87 E. R. 60.

3019. — On appeal to sessions.]—If a statute, authorising a summary conviction before a magistrate, give an appeal to sessions, who are directed to hear & finally determine the matter, this does not take away the *certiorari*, even after such an appeal made & determined.—*R. v. JUKES* (1800), 8 Term Rep. 542; 101 E. R. 1536.

Annotations:—Refd. *R. v. Belton* (1848), 17 L. J. M. C. 70; *Ex p. Napton Overseers* (1856), 20 J. P. 581. *Mentd.* *Ayrton v. Abbott* (1848), 18 L. J. Q. B. 314.

3020. By words incorporating provisions of previous statute—*Certiorari* taken away by previous statute.]—By 1 Geo. 4, c. xxxix., A. Co. were enabled to make cuts, & a jury was to be impanelled at the ct. of quarter sessions to give compensation, & by sect. 117 it was provided, that no proceedings to be taken in pursuance of the Act should be quashed for want of form, or removed by *certiorari*. By 9 Geo. 4, c. xcvi., relating to the same matter, no such clause was expressly enacted, but it contained an enactment, that the former Act & all powers therein contained were declared to be in full force & effect, & should extend to that Act:—*Held*: (1) the clause taking away the *certiorari* must be considered as embodied in the latter Act; (2) as the statutes did not allow a removal of the proceedings by *certiorari*, the ct. could not indirectly bring them under review by a *mandamus*.—*Re AIRE & CALDER NAVIGATION & LAKE LOCK RY. COS.*, *R. v. WEST RIDING OF YORKSHIRE JJ.* (1834), 1 Ad. & El. 563; 3 Nev. & M. K. B. 802; 2 Nev. & M. M. C. 91; 3 L. J. M. C. 117; 110 E. R. 1322.

Annotations:—As to (1) *Refd.* *R. v. Sheffield Ry.* (1839), 11 Ad. & El. 194. *As to* (2) *Refd.* *R. v. Bristol & Exeter Ry.* (1838), 2 Ry. & Can. Cas. 99; *Jubb v. Hull Dock Co.* (1846), 9 Q. B. 443.

3021. —[—]—(1) A conviction under Public Health Act, 1848 (c. 63), s. 63, can be removed by *certiorari* only where there is excess or refusal of jurisdiction on the part of the justices.

(2) Railways Clauses Consolidation Act, 1845 (c. 20), s. 156, is so incorporated with Towns Improvement Clauses Act, 1847 (c. 34), as to take away the right to remedy by *certiorari*.—*R. v. STAFFORDSHIRE JJ.* (1867), 16 L. T. 430.

b. Not by words directing that "proceedings shall be final"—By inferior court.]—An enactment, that proceedings of an inferior ct. "shall be final," does not take away the jurisdiction of the supreme ct. to review their proceedings under writ of *certiorari*.—*BARNABY v. GARDNER* (1854), James, 306.—CAN.

c. Not by words directing that the award of justices "shall be final & conclusive."—These words do not wrest from the Supreme Ct. its jurisdiction by *certiorari*, & do not apply where the rules of natural justice have been plainly violated, as if a party were condemned on insufficient notice, or without being heard at all.—*CRAWLEY*

3022. *Certiorari* given by statute—Provisions that certain decisions final.]—Poor Law Amendment Act, 1844 (c. 101), s. 39 makes the decision of the auditor of the poor law on any question as to an attorney's bill final, at all events as against the overseers, unless the bill has been taxed before it is presented to the auditor, & therefore the ct. cannot grant, at the instance of the overseers, a *certiorari* to bring up such a disallowance of such a bill of costs. It is true that where a *certiorari* would lie by common law, nothing but express words will take it away, but this is a very different case. The *certiorari* here is given by way of appeal against decisions of the auditor. It would not lie without an express enactment, & in the same statute it is declared that, under certain circumstances, the decision shall be final, that takes such cases out of the enactment giving the *certiorari* (LORD CAMPBELL, C.J.).—*R. v. HUNT* (1856), 6 E. & B. 408; 119 E. R. 918; *sub nom.* *R. v. NAPTON OVERSEERS*, 25 L. J. Q. B. 296; 2 Jur. N. S. 1138; *sub nom.* *Re NAPTON OVERSEERS*, 27 L. T. O. S. 124; 20 J. P. 581; 4 W. R. 561.

Annotations:—Mentd. Southampton Grdns. v. Bell & Taylor (1888), 21 Q. B. D. 297; *Re Porter*, Amphlett & Jones, [1912] 2 Ch. 98.

In county courts.]—See COUNTY COURTS, Vol. XIII., pp. 543-546.

B. Extent of Restriction.

3023. Whether confined to proceedings under restricting statute—Indictment for non-repair of bridges.]—Upon motion to quash a *certiorari* to remove an indictment against the defts. at sessions, for not repairing a bridge; it was insisted that by 1 Anne, c. 18, the *certiorari* was taken away:—*Held*: the Act extended only to bridges where the county was charged to repair, & where a private person or parish was charged 5 & 6 Will. & Mar., c. 11, had allowed the granting a *certiorari*, & therefore the *certiorari* would not be quashed.—*R. v. HAMWORTH, STAFFS (INHABITANTS)* (1731), 2 Stra. 900; 93 E. R. 927; *sub nom.* *R. v. HANDSWORTH (INHABITANTS)*, 1 Barn. K. B. 145.

3024. — Whether extended to incorporated statutes.]—12 Geo. 1, c. 34, s. 3, makes it an offence for clothiers & other manufacturers to pay the wages of their workmen in goods instead of money. 22 Geo. 2, c. 27, creates several new offences, & extends the provisions of the proceeding statute to silk manufacturers, & Frauds by Workmen Act, 1777 (c. 56), s. 22, takes away the *certiorari* upon convictions under the 22 Geo. 2, c. 27. A silk manufacturer having been convicted under 12 Geo. 1, c. 34, s. 3, & 22 Geo. 2 c. 27:—*Held*: he was not deprived of the *certiorari* by force of the Act of 1777.—*Re KAYE* (1822), 1 Dow & Ry. K. B. 436; 1 Dow. & Ry. M. C. 114.

3025. — Restriction repealed.]—The trustees of a turnpike road, under a local Act served a notice on a party, containing an offer of a sum as compensation for his undivided third part in a term in the premises, with a warning that, in default of his acceptance, a jury would be summoned to assess compensation. They afterwards served him with a second notice, directed to him and several other parties interested in the premises, that, in pursuance of the local Act & Turnpike

v. ANDERSON (1868), 7 N. S. R. 385.—CAN.

3026. i. By words incorporating provisions of previous statute—*Certiorari* taken away by previous statute.]—*Ex p. HARLEY* (1862), 10 N. B. R. 264.—CAN.

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Roads Act, 1822 (c. 126), a jury would be sworn to assess the sums to be paid to the parties for their respective interests. The jury were summoned, & sworn to assess the sums to be paid to the parties for their respective estates, but found only the gross value of the premises, & the inquisition stated that the jury found that sum to be the value to be paid to the parties for their estates, "according to their respective proportions therein," without apportioning it:—*Held*: the inquisition might be brought up by *certiorari*, being a proceeding under the local Act & Turnpike Roads Act, 1822 (c. 126), s. 85; sect. 145 of the latter Act, which took away *certiorari*, being repealed by 4 Geo. 4, c. 95, s. 86 & 4 Geo. 4, c. 95, s. 87, took away *certiorari* in cases only of proceedings under 4 Geo. 4, c. 95.—*R. v. NORWICH & WATTON ROAD TRUSTEES* (1836), 5 Ad. & El. 563; 2 Har. & W. 385; 1 Nev. & P. K. B. 32; 6 L. J. K. B. 41; 111 E. R. 1278.

Annotations:—*Distd. R. v. Bristol & Exeter Ry.* (1838), 11 Ad. & El. 202, n. *Mentd. Taylor v. Clemson* (1844), 11 Cl. & Fin. 610.

3026. —.]—A railway Act directed that the purchase money of lands taken by the co. should be assessed by a jury impanelled by the sheriff or under-sheriff, or, in case they should be interested, by certain other persons specified to whom a warrant was to be issued by the co., & by whom the jury & witnesses were to be sworn. It also provided that the verdict & judgment should be deposited with the clerk of the peace, & be deemed records to all intents & purposes & that no proceedings taken in pursuance of the act should be removed by *certiorari*:—*Held*: a *certiorari* would not lie to remove an inquisition on the ground that it was taken, two persons appointed *pro hac vice* by the sheriff, but not being any of the persons specially named in the Act.

This ct. holds jurisdiction over all inferior cts., & where *certiorari* is taken away by Act of Parliament it must be in the terms of that Act & for something done in pursuance of it (LORD DENMAN, C.J.).

Where there is total want of jurisdiction & the parties have proceeded in defiance *certiorari* is not taken away (PATTESON, J.).—*R. v. SHEFFIELD Ry. Co.* (1839), 11 Ad. & El. 194; 1 Ry. & Can. Cas. 537; 3 Per. & Dav. 111; 9 L. J. Q. B. 13; 113 E. R. 388; *sub nom. Ex p. LEIGH v. SHEFFIELD & MANCHESTER Ry. Co.*, 4 Jur. 268.

3027. — *Exercise of powers under former statute.*—(1) Under 13 Geo. 2, c. 18, s. 5, notice to justices of motion for a *certiorari*, subscribed by A. B., "solr. for D.," the party intending to move, & in other respects regular, is sufficient to authorise the motion, though the notice do not expressly state that D. is suing forth the *certiorari*, & there be no affidavit that the notice is in fact served at the instance of D., if the justices show cause & do not offer affidavits to the contrary.

(2) An order of county justices, authorising a contract with the council of a borough for the maintenance of borough prisoners in the county house of correction in pursuance of 5 Geo. 4, c. 85, s. 1, & Municipal Corpns. Act, 1835 (c. 76), s. 114, is an order made under the former statute, though the town council derive their power of contracting from the latter. And therefore Municipal Corpns. Act, 1835 (c. 76), s. 132, does not prevent the re-

moval of such order by *certiorari*.—*R. v. LANCA-SHIRE JJ.* (1839), 11 Ad. & El. 144; 3 Per. & Dav. 86; 9 L. J. Q. B. 9; 3 J. P. 768; 4 Jur. 121; 113 E. R. 369.

Annotations:—*As to* (1) *Reid. R. v. Solly* (1840), 9 Dowl. 115; *R. v. Darton* (1844), 14 L. J. M. C. 41; *R. v. Kent JJ.* (1873), 42 L. J. M. C. 112. *As to* (2) *Reid. R. v. Boucher* (1842), 3 Q. B. 641.

3028. — *Proceedings partly within & partly without statute.*—By 7 & 8 Vict. c. ciii., s. 79, a co. were empowered to agree with the owners of certain lands for the purchase thereof:—*Held*: a clause in such an Act taking away the *certiorari* did not apply to the case of proceedings which operated upon something not within the Act, though some part might be within it.—*R. v. HULL DOCK CO.* (1846), 3 Ry. & Can. Cas. 795.

3029. — *Indictment for non-repair of highway—Proceeding at common law.*—Highway Act, 1835 (c. 50), s. 107, does not take away the writ of *certiorari* in cases of indictments for non-repair preferred at assizes, as the finding of such an indictment is not anything done in pursuance of the statute, but is a proceeding at common law.—*R. v. SANDON (INHABITANTS)* (1854), 3 E. & B. 547; 23 L. J. M. C. 129; 23 L. T. O. S. 64; 18 J. P. 266; 18 Jur. 401; 2 W. R. 374; 2 C. L. R. 1699; 118 E. R. 1247.

Annotation:—*Reid. R. v. Eardisland* (1854), 3 E. & B. 960.

3030. — *Restricting statute modified by subsequent statute.*—Rule to show cause why a *certiorari* should not go to justices of the county of S. for removing up some orders made upon the parish of E. requiring them to be contributory to the inship of T. It was admitted that 3 & 4 Will. 3, c. 12, s. 3, took away *certiorari* from removing up orders made upon parishes in general for not repairing highways, but it was contended that as the present order was founded upon 7 & 8 Will. 3, c. 29, a *certiorari* would lie:—*Held*: as the second statute had a relation to the first there was some doubt as to whether it would lie, & accordingly the rule would be enlarged.—*ANON.* (1732), 2 Barn. K. B. 207; 94 E. R. 452.

3031. — —.]—If a statute, creating an offence, gives cognisance of it to one justice, with an appeal to sessions, & takes away the *certiorari* as to all the proceedings, & afterwards further powers for the punishment of the offender are given to sessions by another statute, which does not take away the *certiorari*, the clause for taking away the *certiorari* in the former Act cannot be extended to the proceedings under the latter. Therefore, where there have been proceedings under both statutes, those under the former Act cannot be removed, but those under the latter may.—*R. v. TERRET* (1788), 2 Term Rep. 735; 100 E. R. 395.

Annotation:—*Reid. R. v. Norwich & Watton Road Trustees* (1836), 5 Ad. & El. 563.

3032. — —.]—A conviction under 1 & 2 Will. 4, c. 82, s. 30, is still irremovable by *certiorari* under sect. 45 of the Act, notwithstanding 5 & 6 Will. 4, c. 20, s. 21, the provisions of which only altered the application of the penalties incurred under the previous Act.—*R. v. HESTER* (1836), 4 Dowl. 589; 1 Har. & W. 650.

3033. — —.]—Under Public Health Act, 1848 (c. 63), s. 137, proceedings are not removable by *certiorari*. Under Local Government Act, 1858 (c. 98), s. 60, proceedings may be removed under certain circumstances. A resolution &

PART IX. SECT. 7, SUB-SECT. 2.—B.

3026 I. *Whether confined to proceedings under restricting statute.*—*R. v. WALKER* (1887), 13 O. R. 83.—*CAN.*

order for payment of a sum of money was made by the local Board of Health acting under the former Act:—*Held*: the latter Act did not apply, & the ct. would discharge a rule nisi for a *certiorari*.—*R. v. GLOUCESTER CORPN.* (1859), 33 L. T. O. S. 145; 23 J. P. 709.

3034. ———. [*Includes appeals.*]—The ct. cannot review the decision of quarter sessions, quashing a borough rate, imposed under 5 & 6 Will. 4, c. 76, as the *certiorari* is taken away by sect. 132.—*R. v. RIPPON JJ.* (1837), 7 Ad. & El. 417; 2 Nev. & P. K. B. 411; Nev. & P. M. C. 382; 7 L. J. M. C. 8; 1 J. P. 248; 112 E. R. 527.

3035. ———. [*—*]—A conviction for embezzling materials, even though confirmed on appeal under Frauds by Workmen Act, 1777 (c. 56), s. 6, cannot be removed by *certiorari*, for that writ is taken away by sect. 22 of the statute.—*R. v. COOKE* (1841), 5 J. P. 709; 5 Jur. 1181.

3036. ———. [*—*]—A local Act, 6 & 7 Vict. c. lxxvi., empowered certain comrs. to make an assessment for the purpose mentioned in the Act. The Act contained several clauses, relating to proceedings before magistrates to enforce the payment of the assessment, & by sect. 158 provided that no proceeding in pursuance of the Act should be quashed or vacated for want of form, or should be removed by *certiorari* or otherwise into any of the superior cts. The power to appeal to quarter sessions was given by sect. 161:—*Held*: the clause taking away the *certiorari* had a general application to all proceedings under the Act, & therefore applied to the case of an appeal under sect. 161.—*R. v. LINDSEY JJ.* (1845), 3 Dow. & L. 101; 1 New Mag. Cas. 603; 2 New Sess. Cas. 56; 14 L. J. M. C. 151; 5 L. T. O. S. 219; 9 Jur. 791; 9 J. P. Jo. 375.

C. Effect of Restriction.

(a) The Crown.

3037. Right not taken away.—A *certiorari pro rege* lies on 13 Geo. 3, c. 78, s. 24, relative to highways before traverse of the indictment or judgment thereupon. In cases of this sort there is no distinction [between the King & a private person]; & the words "till such indictment be traversed, etc.," show very plainly that this clause was not intended to take away a *certiorari* at the instance of the Crown, for the King does not traverse (*per cur.*).—*R. v. BODENHAM (INHABITANTS)* (1774), 1 Cowp. 78; 98 E. R. 976.

Annotations:—*Consd.* *R. v. Cumberland County* (1795), 6 Term Rep. 194. *Appld.* *R. v. Boulton* (1836), 4 Ad. & El. 498.

3038. ———. [*—*]—1 Ann. c. 18, s. 5, has not taken away from the Crown the power of removing by *certiorari* an indictment for not repairing a county bridge.

It is the prerogative of the King to issue his *certiorari*, & the general words of the statute have not taken away the *certiorari* at the instance of the Crown, but only that which issued at the instance of the party (*LORD ELDON, C.*).—*CUMBERLAND COUNTY (INHABITANTS) v. R.* (1803), 3 Bos. & P. 354; 127 E. R. 193, H. L.; *affg.* *S. C. sub nom. R. v. CUMBERLAND COUNTY (INHABITANTS)* (1795), 6 Term Rep. 194.

Annotations:—*Refd.* *R. v. Allen* (1812), 15 East, 333. *Mentd.* *R. v. Surrey* (1810), 2 Camp. 455; *R. v. Devon* (1825), 7 Dow. & Ry. K. B. 147; *R. v. Oxfordshire* (1825), 3 L. J. O. S. K. B. 198; *McKinnon v. Penson* (1853), 8 Exch. 319.

3039. ———. [*—*]—(1) 43 Geo. 3, c. 74, s. 15, does not preclude the Crown from removing a conviction by justices of the peace for penalties, & the order of sessions quashing the same, by *certiorari*.

(2) Where sessions, upon proof that applt. had received from the clerk of the convicting magistrates a copy of his conviction signed & sealed by such justices, purporting, on the face of it, to have been made upon the information of B. & C., though such copy was drawn up on the back of the paper which contained the information of A. the true informer, B. & C. being only the witnesses who had been examined in support of the charge, & though the same justices had returned to sessions to be filed of record a regular conviction of the same date, signed & sealed by them, on parchment, stating it to have been made on the information of A., & supported by the evidence of B. & C., according to the truth of the case, had quashed the latter conviction so returned by the justices, as being at variance with the minutes of the conviction delivered to applt., without entering into the merits of the case upon a preliminary objection taken by applt., this ct. quashed the order of sessions generally, thereby setting up again the regular conviction, considering that the variance arose from the mere mistake & irregularity of the justice's clerk, & that applt. was not really surprised by it, but had waived his appeal on the merits.—*R. v. ALLEN* (1812), 15 East, 333; 104 E. R. 870.

Annotations:—*As to* (1) *Consd.* *R. v. Boulton* (1836), 4 Ad. & El. 498. *As to* (2) *Refd.* *Chaney v. Payne* (1841), 1 Q. B. 712.

3040. ———. [*—*]—The *certiorari* being taken away by the statute [6 Geo. 4, c. 125, s. 82] the prisoner could not bring the conviction before the ct., but the Crown might have done so, for it has been often decided that in such cases the *certiorari* is not taken away from the Crown (*PATTESON, J.*).—*R. v. CHANEY* (1838), 6 Dowl. 281; 1 Will. Woll. & H. 54; 7 L. J. M. C. 65; *sub nom. Re CHANEY*, 2 Jur. 80.

Annotations:—*Refd.* *Chaney v. Payne* (1841), 1 Q. B. 712. *Mentd.* *Re Peerless* (1841), 10 L. J. M. C. 67; *Re Cavanah* (1842), 6 Jur. 220; *Ex p. Fletcher* (1843), 8 Jur. 146; *R. v. King* (1843), 13 L. J. M. C. 43; *Charter v. Greame* (1849), 13 Q. B. 216; *Re Timson* (1870), L. R. 5 Exch. 257.

3041. ———. [*Revenue cases.*]—The prerogative of the Crown to remove into the Ct. of Exch. a cause in another ct. touching the Crown revenue, is not affected by County Cts. Act, 1846 (c. 95).—*MOUNTJOY v. WOOD* (1856), 1 H. & N. 58; 2 Jur. N. S. 452; 27 L. T. O. S. 82; 156 E. R. 1117.

3042. ———. [*Unless expressly stated.*]—*R. v. BERKLEY & BRAGGE*, No. 2478, *ante*.

3043. ———. [*—*]—*R. v. CLACE*, No. 2471, *ante*.

3044. ———. [*—*]—*R. v. DAVIES*, No. 2480, *ante*.

3045. ———. [*—*]—A statute taking away a *certiorari* does not take it from the Crown, unless expressly mentioned.—*R. v. —* (1815), 2 Chit. 136.

3046. ———. [*—*]—Where an Act of Parliament in general terms takes away the *certiorari*, that is not binding on the Crown, nor is there any distinction, in that respect, between a case where the Crown is interested, & a case where the prosecution is by a private individual.—*R. v. BOULTBEE* (1836), 4 Ad. & El. 498; 1 Har. & W. 713; 6 Nev. & M. K. B. 26; 3 Nev. & M. M. C. 496; 5 L. J. M. C. 57; 111 E. R. 874.

Annotation:—*Mentd.* *R. v. Hester* (1836), 1 Har. & W. 650.

(b) Private Prosecutors.

3047. Whether restriction applicable.—*R. v. BODENHAM (INHABITANTS)*, No. 3037, *ante*.

3048. ———. [*—*]—*CUMBERLAND COUNTY (INHABITANTS) v. R.*, No. 3038, *ante*.

3049. ———. [*—*]—*R. v. BOULTBEE*, No. 3046, *ante*.

Sect. 7.—Statutory restrictions: Sub-sect. 2, C. (c).]**(c) Where Want or Excess of Jurisdiction in Inferior Court.**

3050. General rule.]—An order of justices not warranted by the provisions of an Act of Parliament, may be removed into this ct. by *certiorari*, though the Act contains a section taking away the *certiorari*.

Nuisances Removal Act, 1855 (c. 121), s. 39, taking away the writ of *certiorari*, is not applicable when the justices have acted without jurisdiction & contrary to the Act, by making an order under sect. 7 on the surveyor of highways, without exhausting the means provided by sect. 22.—*R. v. GOSSE* (1860), 3 E. & E. 277; 30 L. J. M. C. 41; 3 L. T. 404; 6 Jur. N. S. 1369; 121 E. R. 446.

3051. — Neglect of statutory provision—21 Jac. 1, c. 23, s. 6.]—*FAIRLEY v. M'CONNELL*, No. 3173, *post*.

3052. — Not where discretion exercised erroneously.]—*R. v. FOWLER* (1834), 1 Ad. & El. 836; 3 Nev. & M. K. B. 826; 2 Nev. & M. M. C. 403; 110 E. R. 1427.

3053. — Excess of jurisdiction must be substantial.]—*R. v. BRISTOL & EXETER RY. CO.*, No. 2741, *ante*.

3054. — Excess of jurisdiction not appearing on record.]—By 9 Geo. 4, c. 31, s. 27, two justices may convict summarily of a common assault, & conviction or acquittal before them bars further proceedings. Sect. 29 precludes them from exercising this jurisdiction, if they find the assault to have been accompanied by any attempt to commit felony. Two justices convicted summarily, as of a common assault, where it appeared, by the deposition, that deft. had laid hands upon prosecutor in an indecent manner, but without violence. A *certiorari* being moved for, on the ground that the offence, if committed, was accompanied by a felonious attempt, & therefore, within sect. 29:—*Held*: inasmuch as no excess of jurisdiction appeared on the face of the conviction, & the evidence, of which the magistrates were the judges, did not clearly show an intention to commit felony, the ct. would not interfere.—*ANON.* (1830), 1 B. & Ad. 382; 109 E. R. 829.

Annotation:—Refd. R. v. Nat Bell Liquors (1922), 91 L. J. P. C. 146.

3055. — —.]—Tithe Act, 1836 (c. 71), s. 96 takes away the writ of *certiorari*. A certificate of the Tithe Comrs. recited that difference had arisen as to the expenses of apportionment in a particular parish under the Act, & ordered A. to pay to B. & C. a certain sum for those expenses. The ct. refused a rule for a *certiorari* to remove that certificate upon affidavits, stating that no such differences had arisen, that those costs had been paid to the knowledge of the comrs. two years before, & that the real object of the certificate was

to compel the payment of other costs, viz. the costs of a reference of certain objections to the apportionment.—*Ex p. ACLAND* (1847), 9 L. T. O. S. 146; *sub nom. Re ACLAND*, 11 J. P. Jo. 348.

3056. — —.]—A private statute prohibited the burning of any rags or bones, or other offensive substances, for making manure, or for any other purpose of trade or manufacture. Under this statute a person was convicted before the justices of B. of burning offensive substances for the purpose of manufacturing bricks. On motion to bring up & quash the conviction:—*Held*: the conviction did not, upon the face of it, show that the justices had acted beyond their jurisdiction, & as the writ of *certiorari* was taken away by the statute, the ct. could not interfere.—*Ex p. STRONG* (1854), 18 J. P. 810; 3 C. L. R. 76; *sub nom. R. v. STRONG*, 3 W. R. 65; *subsequent proceedings*, 3 W. R. 73.

3057. — Parties proceeding in defiance.]—*R. v. SHEFFIELD RY. CO.*, No. 3026, *ante*.

3058. — Conviction under bye-law not authorised by statute.]—A local board of health made a bye-law (which was duly allowed by a Secretary of State), requiring all occupiers within the district to remove "all snow & other obstructions" from the footpaths opposite their premises before nine o'clock in the forenoon. Upon information laid before a justice under this bye-law, that an occupier had omitted to remove, before the hour specified, an accumulation of snow which had fallen & drifted upon the footpath, he convicted her in a penalty for neglecting to remove "snow," & declined to decide upon the legality of the bye-law, which was contested, considering himself bound by the fact of its allowance by the Secretary of State:—*Held*: the bye-law was not warranted by Public Health Act, 1848 (c. 63), & therefore, the justice had proceeded without jurisdiction, & a *certiorari* might issue, although it was expressly taken away by the statute.—*R. v. WOOD* (1855), 5 E. & B. 49; 119 E. R. 400; *sub nom. R. v. ROSE*, 24 L. J. M. C. 130; 1 Jur. N. S. 802; *sub nom. R. v. STAFFORDSHIRE JJ.*, *Ex p. WOOD*, 25 L. T. O. S. 127; 3 W. R. 419.

Annotations:—Refd. R. v. Lundle (1862), 31 L. J. M. C. 157. *Mentd. Graham v. Berry* (1865), 3 Moo. P. C. C. N. S. 207.

3059. — Award of costs.]—The ct. issued a *certiorari* to bring up an order for payment of costs made under Cruelty to Animals Act, 1849 (c. 92), s. 14 to be quashed, though sect. 26 of the Act enacts that no order shall be removed by *certiorari*.

The justice has no power of ordering, adjudging or awarding that the party shall have costs but is merely to settle what the costs shall be (*CROMPTON, J.*).—*R. v. WARWICKSHIRE JJ.* (1856), 6 E. & B. 837; 25 L. J. M. C. 119; 27 L. T. O. S. 235; 20 J. P. 693; 2 Jur. N. S. 930; 4 W. R. 650; 119 E. R. 1075.

Annotation:—Mentd. Ex p. Novis, [1905] 2 K. B. 456.

3060. — Manifest defect of jurisdiction—**PART IX. SECT. 7, SUB-SECT. 2.—C. (c).**

3050 i. General rule.]—The right to *certiorari* always exists on the ground of want or excess of jurisdiction in inferior cts. even where the right is expressly taken away by statute.—*Ex p. HACKETT* (1882), 21 N. B. R. 513.—*CAN.*

3050 ii. —.]—*Ex p. GOODINE* (1885), 25 N. B. R. 151.—*CAN.*

3050 iii. —.]—*HAWES v. HART* (1885), 6 R. & G. 45.—*CAN.*

3050 iv. —.]—*R. v. SCOTT* (1885), 10 P. R. 517.—*CAN.*

3050 v. —.]—*R. v. DOWLING* (1889), 17 O. R. 698.—*CAN.*

3050 vi. —.]—*R. v. GALBRAITH* (1889), 6 Man. L. R. 14.—*CAN.*

3050 vii. —.]—*R. v. KENNEDY* (1889), 17 O. R. 159.—*CAN.*

3050 viii. —.]—*NADDEAU v. LEVIS CORPN.* (1890), 16 Q. L. R. 210.—*CAN.*

3050 ix. —.]—*Ex p. HILL* (1891), 31 N. B. R. 84.—*CAN.*

3050 x. —.]—*R. v. MCANN* (1896), 4 B. C. R. 587.—*CAN.*

3050 xi. —.]—*Re RUGGLES* (1902), 35 N. S. R. 57.—*CAN.*

3050 xii. —.]—*R. v. BISSETTE*, [1917] 3 W. W. R. 501.—*CAN.*

3050 xiii. —.]—*R. v. RICHMOND*,

[1917] 2 W. W. R. 1200.—*CAN.*

3050 xiv. —.]—*R. v. DUNNING* (1887), 14 O. R. 52.—*CAN.*

3050 xv. —.]—*R. v. EMERY*, [1917] 1 W. W. R. 337; 33 D. L. R. 556; 27 Can. Crim. Cas. 116; 10 Alta. L. R. 139.—*CAN.*

d. — Whether maxim "actus curiae neminem gravabit" applies.]—Where jurisdiction has been taken away by statute, the maxim *actus curiae neminem gravabit* cannot be applied, after expiration of times prescribed, so as to validate an order either by antedating it or entering it *nunc pro tunc*.—*Re TRECOOTH MARRH* (1905), 37 S. C. R. 79.—*CAN.*

Fraud of applicant.]—(1) Where *certiorari* is said to be taken away by statute, the superior ct. is not absolutely deprived of the power to issue the writ; but its action as to the writ is controlled & limited, & it cannot quash the order removed by *certiorari* except upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order, or of manifest fraud in the party procuring it.

(2) A suggestion of the fraudulent use of the legal machinery for winding-up cos. does not disclose such manifest fraud as to entitle the Supreme Ct. so to proceed.

(3) Matters on which the defect of jurisdiction depends may be apparent on the face of the proceedings, or may be brought before the superior ct. by affidavit, but they must be extrinsic to the adjudication impeached.—*COLONIAL BANK OF AUSTRALASIA v. WILLAN* (1874), L. R. 5 P. C. 417; 43 L. J. P. C. 30; 30 L. T. 237; 22 W. R. 516, P. C.

Annotations:—As to (1) *Consol. R. v. Nat Bell Liquors*, [1922] 2 A. C. 128. *Refd. R. v. Woodhouse*, [1906] 2 K. B. 501. *Generally, Mentd. R. v. Bloomsbury Income Tax Comrs.*, [1915] 3 K. B. 768.

3061. —[—]—*R. v. BRADLEY*, No. 2844, *ante*.

3062. **Orders of justices—Under Highway Acts.]—***R. v. DERBYSHIRE JJ.* (1758), 2 Keny. 299; 96 E. R. 1189.

3063. —[—]—*Highway Act, 1773* (c. 78), s. 80, which takes away the *certiorari*, does not extend to cases where the justices at sessions act wholly without jurisdiction. Therefore, where the justices at petty sessions made an order for the allowance of the accounts of a surveyor of highways, which accounts had not previously been verified before one justice, pursuant to the requisites of sect. 48 of the Act:—*Held*: they acted wholly without jurisdiction, their order was not a proceeding, had pursuant to the Act, & consequently *certiorari* lay to remove it into this ct. for the purpose of having it quashed.—*R. v. SOMERSETSHIRE JJ.* (1825), 6 Dow. & Ry. K. B. 469; 3 Dow. & Ry. M. C. 273; *subsequent proceedings* (1826), 5 B. & C. 816.

Annotation:—Mentd. R. v. Sheffield & Manchester Ry. (1839), 3 Per. & Dav. 111.

3064. —[—]—*R. v. OWEN* (1852), 16 J. P. Jo. 374.

3065. —[—]—If a turnpike road be out of repair, a single justice has no power under General Highway Act, 1835 (c. 50), s. 94, to summon the surveyor or other officer of the turnpike road to appear before justices at a special sessions for the highways, & justices at such special sessions have no authority to make an order on such officer of the turnpike road to repair the road or to pay money to be applied to the repairs of it if the turnpike trust funds are insufficient, nor without giving such officer an opportunity of showing the condition of the funds. The clerk of the trustees of a turnpike road which was out of repair had been summoned by a single justice, & two justices, at a special sessions for the highways, without allowing the clerk to show that the turnpike funds were insufficient, made an order convicting him in a penalty, & directing him to repair the road in a specified time:—*Held*: though the *certiorari* was taken away by the Act, this order was so entirely without jurisdiction that a *certiorari* might issue to bring up the order to quash it.—*R. v. ST. ALBANS JJ.* (1853), 22 L. J. M. C. 142; 17 Jur. 531; 1 O. L. R. 536.

3066. — **Under Lands Clauses Consolidation Act, 1845** (c. 18), ss. 22, 24—**Complaint laid too late.]—**In the course of 1846 & 1847, damage was done by the operations of a railway co. governed

by a special act, incorporating the above Act, to certain lands, the owner of which, in the year 1850, claimed compensation for a sum less than £50 in respect of the damage, & applied to two justices under the above Act to settle the amount, & obtained an order from them. No time is limited by the above Act for applying to the justices, & sect. 145 takes away the writ of *certiorari*. Summary Jurisdiction Act, 1848 (c. 43), s. 11 limits the period for making complaints or laying informations, where no time is specially limited by the Act under which the complaint is made, to six months from the time when the matter of the complaint arose. Sect. 38 directs that the Act shall come into operation on Oct. 2, 1848. The order was removed by *certiorari*, & a motion was made to quash it:—*Held*: after Oct. 2, 1848, sect. 11 of the 1848 Act applied to all complaints & informations within the meaning of that statute, & therefore that the complaint had been made too late; & the order would be quashed.—*R. v. LEEDS & BRADFORD RY. CO.* (1852), 18 Q. B. 343; 21 L. J. M. C. 193; 19 L. T. O. S. 86; 16 J. P. 631; 16 Jur. 817; 118 E. R. 129.

Annotation:—Mentd. New River Co. v. Mather (1875), 44 L. J. M. C. 105.

3067. — **Under Nuisances Removal Act, 1855** (c. 121).—*R. v. GOSSE*, No. 3050, *ante*.

3068. — **Appointment of inspector of weights & measures.]—**The sessions have power to appoint inspectors of weights & measures; & for such appointment, they may, if they think fit, select inspectors & superintendents of rural police, acting under County Police Act, 1839 (c. 93); & therefore such appointment cannot be removed by *certiorari*, 5 & 6 Will. 4, c. 63, s. 36, taking away the *certiorari*.—*R. v. JARVIS* (1854) 3 E. & B. 640; 18 J. P. 601; 18 Jur. 1051; 118 E. R. 1282.

3069. — **Removal of district surveyor—Demand of illegal fee—Metropolitan Building Act, 1844** (c. 84), s. 79.]—A complaint, under the above Act, was preferred to the quarter sessions by W. in which W. stated that B. was district surveyor of L. & that W. built in L. three dwelling-houses, & that three privies, attached to the back of & belonging to them, were built at the same time, & covered in within 21 days after the dwelling-houses had been covered in, & that B. first delivered an account claiming £2 2s. in respect of each of the dwelling-houses which was paid to him, & afterwards an account of 10s. in respect of each of the privies, & in his capacity of surveyor, demanded & received them from complainant, he not being entitled thereto under the Act. The sessions made an order that the complaint was well founded, & dismissed B. from the office of surveyor. The order of sessions was removed by *certiorari* & motion was made to quash it. Sect. 104 of the Act enacts that it shall not be lawful to remove any order, made under the Act, by *certiorari*. It appeared by affidavit that the second fee was claimed on the ground that, within the meaning of the Act, the privies had not been covered over within 21 days, & were distinctly rated:—*Held* the order of sessions would be quashed for want of jurisdiction.—*R. v. BADGER* (1856), 6 E. & B. 137; 25 L. J. M. C. 81; 26 L. T. O. S. 324; 20 J. P. 164; 2 Jur. N. S. 419; 119 E. R. 816.

3070. — **Destruction of obscene publication—Metropolitan Police Courts Act, 1839** (c. 71).—An order by a magistrate for the destruction of obscene books under Obscene Publications Act, 1857 (c. 83), s. 1 is bad if it merely states that the magistrate was satisfied that the books were obscene, but not that he was satisfied that the

Sect. 7.—Statutory restrictions: Sub-sect. 2, C. (c),

publication of them would be a misdemeanour, & proper to be prosecuted as such. On an application for a *certiorari* to bring up the order so that it might be quashed:—*Held*: the order did not show that the magistrate had jurisdiction to make it; & this objection was one to the jurisdiction & not of form, & therefore the provisions of the above Act did not apply, & a *certiorari* must go.

Semble, sect. 40 of the above Act only takes away *certiorari* in the case of offences made punishable by that statute, & not in all cases decided by a metropolitan police magistrate.

Qu.: whether on the return under the *certiorari* the justices could amend the order under Quarter Sessions Act, 1849 (c. 45), s. 7.—*Ex p. BRADLAUGH* (1878), 3 Q. B. D. 509; 47 L. J. M. C. 105; 38 L. T. 680; 42 J. P. 583; 26 W. R. 758, D. C.

Annotations:—*Reid*. *R. v. Bradley* (1894), 58 J. P. 199; *Ex p. Norman* (1915), 114 L. T. 232.

3071. Special case by sessions—Public Health Act, 1848 (c. 63), s. 137.]—*R. v. FIELDING*, No. 3624, *post*.

3072. Conviction by justices—Game Act, 1831 (c. 32).]—A conviction under the above Act directed the penalty "to be paid & applied according to law," & in default of payment forthwith, deft. to be imprisoned for two months. 5 & 6 Will. 4, c. 20, s. 21, enacted that the penalties imposed by the above Act were to be "applied, one half to the informer, & the other half to overseer of the poor, or some other officer, as the convicting justice or justices shall direct of the parish, township, or place in which the offence shall have been committed." A motion having been made for a *certiorari* to bring up the conviction, in order that it might be quashed:—*Held*: the *certiorari* was not taken away in this case by sect. 45 of the Act of 1831, the justices having acted without jurisdiction, in directing the imprisonment in default of the non-payment of a fine which was not legally adjudicated on, the jurisdiction to imprison only arising on the non-payment of the penalty.—*Ex p. HYDE* (1851), 4 New Sess. Cas. 745; 17 L. T. O. S. 170; 15 J. P. 452; 15 Jur. 803; *subsequent proceedings*, *sub nom. R. v. HYDE* (1852), 7 E. & B. 859, n.

3073. ———.]—A separate information & separate summons were respectively laid & issued against two persons for having used nets for the purposes of taking game contrary to sect. 23 of the above Act. The summons were returnable at the same time, & as the two persons had been using the nets together, the two cases were heard as one. The two persons were severally convicted in full penalties. Sect. 45 of the Act takes away the writ of *certiorari*. On cause shown against a rule *nisi* for a *certiorari* to bring up the convictions that they might be quashed on the grounds that the justices had imposed two distinct penalties for one joint offence, & that they had heard the two cases as one:—*Held*: there was no excess of jurisdiction, & the rule must be discharged.—*R. v. STAFFORDSHIRE JJ.* (1858), 32 L. T. O. S. 105; 23 J. P. 486.

Annotation:—*Mentd. Re Brighton Stipendiary Magistrate* (1893), 9 T. L. R. 522.

See, further, GAME.

3074. ——— On insufficient notice—Factory Act, 1844 (c. 15), s. 41.]—Where a summons under sect. 41 of the above Act required defts. to appear & answer the charges on the day following the service:—*Held*: as the statute was silent as to the time to elapse between the service & the

appearance, the justices were the proper judges of the reasonableness of the time, & they having held the notice to be sufficient, this ct. could not say that it was necessarily bad, so as to warrant their interference.

If the justices have misconducted themselves & acted *malâ fide*, they may be liable to a criminal information. The question is, whether we can review the conduct of the justices in the ct. below, our common law jurisdiction by *certiorari* having been taken away. Unless it can be clearly shown that they have acted altogether without jurisdiction, we certainly have no power to do so (*LORD CAMPBELL, C.J.*).—*Ex p. HOPWOOD* (1850), 15 Q. B. 121; 4 New Sess. Cas. 174; 19 L. J. M. C. 197; 14 Jur. 812; 117 E. R. 404; *sub nom. Re HOPWOOD*, 15 L. T. O. S. 134; 14 J. P. 590.

Annotations:—*Reid. Ex p. Williams* (1851), 2 L. M. & P. 580; *R. v. Whitfield* (1855), 15 Q. B. D. 122; *R. v. Glamorganshire JJ.* (1889), 5 T. L. R. 636; *R. v. Nat Bell Liquors*, [1922] 2 A. C. 128. *Mentd. Osgood v. Nelson* (1869), 10 B. & S. 119.

3075. ——— On invalid bye-law—Public Health Act, 1848 (c. 63), ss. 55, 137.]—Under the above Act local boards of health have no general power to make bye-laws for carrying out the purposes of the Act, but only such bye-laws as are authorised by sect. 55, & a bye-law that all occupiers of any premises within the district shall properly clean & remove all snow, or other obstructions, from the footpath & channel opposite their respective premises, before 9 a.m. of each day is bad. An information having been laid against an occupier under this bye-law, & it having been proved that the occupier had neglected to remove snow, it was objected that the bye-law was bad, but the justice decided that, inasmuch as it had been allowed by the Secretary of State, under sect. 115, he could not entertain the objection, & he convicted the occupier. The ct. quashed the conviction on *certiorari*, though sect. 137 enacts that no proceeding touching the conviction of any offender against the Act be removable by *certiorari*, as the justice had acted without jurisdiction.—*R. v. WOOD* (1855), 5 E. & B. 49; 3 C. L. R. 1134; 119 E. R. 400; *sub nom. R. v. ROSE*, 24 L. J. M. C. 130; 1 Jur. N. S. 802; *sub nom. R. v. STAFFORDSHIRE JJ.*, *Ex p. WOOD*, 25 L. T. O. S. 127; 3 W. R. 419.

Annotations:—*Mentd. R. v. Lundie* (1861), 31 L. J. M. C. 157; *Graham v. Berry* (1865), 3 Moo. P. C. C. N. S. 207.

3076. ——— Without previous information.]—M. being found assisting in illicit distillation was arrested in the evening by E., an excise officer, & two police constables. E. left M. in charge of the police, & went to find a justice of the peace before whom prisoner could be taken, under Excise Management Act, 1827 (c. 53), s. 33. Several justices refused to act, but at length, on the second day after the arrest, one was found, who, after hearing the charge, convicted M. There was no information or conviction, but only a warrant of commitment granted to E., after prisoner failed to pay the fine imposed. M. having moved for his discharge on the ground of the detention by the police having been illegal:—*Held*: (1) E. was justified, under sect. 33 of the Act, in leaving M. in charge of the police while seeking a justice, & whether there was unreasonable delay or not in taking the prisoner before a justice, the justice had jurisdiction, & the superior ct. could not interfere, as the writ of *certiorari* was taken away by sect. 79; (2) the arrest was an immediate arrest, & no information in writing was necessary, & there was no substantial irregularity in the proceedings.—*EVANS v. McLOUGHLIN* (1861), 4 L. T. 31; 25 J. P. 211; 7 Jur. N. S. 1259, H. L.

3077. Conviction by Commissioners of Excise.]—*R. v. WHITBREAD*, No. 2772, *ante*.

3078. Order of Metropolitan Board of Works—Compensation to retiring official—Metropolis Management Act, 1855 (c. 120), s. 125.]—A *certiorari* issued to bring up an order of the Metropolitan Board made, under sect. 214 of the above Act on an appeal from a decision of the district board, by which order compensation was granted to D. as an officer to certain comrs. The *certiorari* is taken away by sect. 230. This *certiorari* was issued on affidavits by which it appeared that D. was not an officer, & that consequently the order was made without jurisdiction. On showing cause against a rule to quash this order:—*Held*: the board had jurisdiction on the appeal to decide whether D. was an officer or not, & even assuming that their decision was wrong in fact, the order was not without jurisdiction.—*R. v. ST. OLAVE'S DISTRICT BOARD* (1857), 8 E. & B. 529; 21 J. P. Jo. 756; 120 E. R. 198; *sub nom. R. v. METROPOLITAN BOARD OF WORKS*, 27 L. J. Q. B. 5; 30 L. T. O. S. 132; 4 Jur. N. S. 25; 6 W. R. 57.
Annotations:—Refd. Colonial Bank of Australasia v. Willan (1874), L. R. 5 P. C. 417; *R. v. Woodhouse*. [1906] 2 K. B. 501.

Compulsory purchase of land.]—See COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI., p. 185, No. 653; p. 209, Nos. 908–911.

(d) Indictments.

3079. Where common law counts joined with statutory counts.]—30 Geo. 2, c. 24, s. 20, takes away the writ of *certiorari*, but where counts on that statute are joined with counts for a conspiracy at common law to obtain goods by false pretences the *certiorari* is not taken away.—*R. v. SAUNDERS* (1825), 5 Dow. & Ry. K. B. 611; 2 Dow. & Ry. M. C. 591.

3080. Indictment removed to Central Criminal Court—Second removal to Court of Queen's Bench.]—*R. v. BRIER*, No. 2528, *ante*.

3081. For keeping gaming house—Disorderly Houses Act, 1751 (c. 36), s. 10.]—The writ of *certiorari* at the instance of a deft. is taken away by Disorderly Houses Act, 1751 (c. 36), s. 10, in the case of an indictment for keeping a gaming house.—*R. v. FOX* (1836), 5 Dowl. 242.

3082. For keeping a disorderly house—Disorderly Houses Act, 1751 (c. 36), s. 10.]—On indictment for keeping a disorderly house, the power of the ct. to grant a *certiorari* at the deft.'s instance is taken away by Disorderly Houses Act, 1751 (c. 36), s. 10, whether the prosecution be instituted according to sects. 5 & 6 of that Act, or in the ordinary course.—*R. v. SANDERS* (1846), 9 Q. B. 235; 15 L. J. M. C. 158; 10 J. P. 803; 10 Jur. 1080; 115 E. R. 1264.

3083. For false pretences—7 & 8 Geo. 4, c. 29, s. 53.]—*R. v. SILL*, No. 2525, *ante*.

(e) Other Cases.

3084. Propriety of conviction not discussed—On special case sent up from sessions.]—The ct. will not allow the propriety of a conviction under Turnpike Roads Act, 1822 (c. 126), to be discussed upon a special case sent up from sessions, 4 Geo. 4, c. 95, s. 87, having expressly taken away the writ of *certiorari*.—*R. v. BEALE* (1832), 1 L. J. M. C. 75.

3085. Proceedings not brought under review by

mandamus.]—*Re AIRE & CALDER NAVIGATION & LAKE LOCK RY. COS., R. v. WEST RIDING OF YORKSHIRE JJ.*, No. 3020, *ante*.

As to mandamus, *see* Part VI., *ante*.

3086. Interference with right of way—Whether within 21 Jac. 1, c. 23.]—An action for interference with a right of way is not removable from an inferior ct. of record notwithstanding 21 Jac. 1, c. 23, s. 4, without entering into an unconditional recognisance for payment of the debt & costs, under Inferior Cts. Act, 1779 (c. 70), s. 6, amended by Imprisonment for Debt Act, 1827 (c. 71), s. 6.—*FRANKS v. QUINSEE* (1839), 7 Dowl. 607; 2 Will. Woll. & H. 58; 3 Jur. 1104.

3087. Fraudulent proceedings—Malversation.]—A statute taking away *certiorari* will not prevent the Ct. of Q. B. from setting aside the judgment of an inferior ct. in a case of malversation.

Where, at quarter sessions, some of the justices voted in support of an order in which they were interested:—*Held*: the ct. was improperly constituted, a case of malversation made out, & the order having been removed, notwithstanding a statute taking away *certiorari*, would be quashed.—*R. v. CHELTENHAM COMRS.* (1841), 1 Q. B. 467; 1 Gal. & Dav. 167; 10 L. J. M. C. 99; 5 Jur. 867; 113 E. R. 1211.

Annotations:—Refd. Colonial Bank of Australasia v. Willan (1874), L. R. 5 P. C. 417. *Mentd. R. v. Hertfordshire J.J.* (1845), 6 Q. B. 753; *Er p. Acland* (1847), 9 L. T. O. S. 146; *Fuller v. Brown* (1849), 13 L. T. O. S. 301; *R. v. Abordare Canal Co.* (1850), 14 Q. B. 854; *R. v. Middlesex J.J.* (1854), 18 J. P. Jo. 390; *R. v. Surrey J.J.* (1855), 19 J. P. Jo. 755; *Graham v. Berry* (1865), 3 Moo. P. C. C. N. S. 207.

3088. —.]—By 7 & 8 Geo. 4, c. 53, s. 79, no *certiorari* shall be issued at the suit of any deft. to remove any proceedings before magistrates under the Excise Acts, provided that the enactment shall not extend to any *certiorari* on behalf of the Crown out of the Ct. of Exch. A maltster having procured the conviction of a servant for an offence under 7 & 8 Geo. 4, c. 52, s. 46, by collusion with the servant, & in order to protect himself against proceedings for the same offence, the Ct. of Q. B. granted a *certiorari* & quashed the conviction.—*R. v. GILLYARD* (1848), 12 Q. B. 527; 3 New Mag. Cas. 43; 3 New Sess. Cas. 207; 17 L. J. M. C. 153; 11 L. T. O. S. 240; 12 J. P. 456; 12 Jur. 655; 116 E. R. 965.

Annotations:—Mentd. Re Shropshire J.J., Er p. Blewitt (1866), 14 L. T. 598; *R. v. Hughes* (1879), 48 L. J. M. C. 151.

3089. —.]—COLONIAL BANK OF AUSTRALASIA *v. WILLAN*, No. 3060, *ante*.

3090. Consent of parties—Whether amounting to exception.]—By Municipal Corpns. Act, 1835 (c. 76), s. 90, councils of corporate boroughs are empowered to make bye-laws. By sect. 91 offences against such bye-laws may be punished by summary conviction. By sect. 132 the writ of *certiorari* is taken away. The recorder, upon an appeal against such a conviction for an offence against a bye-law, having, with the consent of the parties, stated a case & referred, as the only question for the ct. to determine, the question whether the facts amounted to an offence within the bye-law, & the ct. having granted a writ of *certiorari* to bring up the case:—*Held*: by virtue of the consent of the parties, the ct. might receive the case, & determine the question, although the writ of *certiorari* was taken away.—*R. v. DICKENSON* (1857), 7 E. & B. 831; 26 L. J. M. C. 204; 29 L. T. O. S. 180; 22 J. P.

PART IX. SECT. 7, SUB-SECT. 2.—
C. (a).

contrary to fundamental principles of criminal procedure.]—*Re SING KEE* (1901), 8 B. C. R. 20.—CAN.

on merits.]—*R. v. CASWELL* (1873), 33 U. C. R. 303.—CAN.

g. —.]—*R. v. BECKER* (1891), 20 O. R. 676.—CAN.

g. Whether when act done is

f. Whether when appeal not heard

*Sect. 7.—Statutory restrictions: Sub-sect. 2, C. (e).
Sect. 8: Sub-sects. 1, 2 & 3.]*

243; 3 Jur. N. S. 1076; 5 W. R. 654; 119 E. R. 1455.

Annotations:—Consd. R. v. Chantrell (1875), L. R. 10 Q. B. 587. Mentd. Kydd v. Liverpool Watch Committee, (1907) 2 K. B. 591.

3091. ———.]—On an appeal against a conviction under Cruelty to Animals Act, 1849 (c. 92), s. 2, the sessions, with the consent of counsel on both sides, confirmed the conviction, subject to a case to be stated for the Ct. of Q. B. A writ of *certiorari*, for the purpose of bringing up the conviction & the case, had been obtained. By sect. 26, no conviction, judgment or proceeding relative thereto, shall be removed by *certiorari*, or otherwise, into any superior ct.:—*Held*: the writ of *certiorari*, having been taken away generally, without any exception in favour of a special case, the consent of the parties could not give the ct. jurisdiction, & therefore the writ had issued impropvidently, & must be quashed.—*R. v. CHANTRELL* (1875), L. R. 10 Q. B. 587; 44 L. J. M. C. 94; 33 L. T. 305; 39 J. P. 472; 23 W. R. 707.

Annotations:—Mentd. R. v. Walsall Overseers (1878), 3 Q. B. D. 457; R. v. Carpenter & Bristol Corpn. (1907), 71 J. P. 417; Kydd v. Liverpool Watch Committee, (1907) 2 K. B. 591.

3092. Informality of procedure—Not amounting to excess of jurisdiction.]—13 Geo. 3, c. 78, s. 80, prohibits the removal by *certiorari* into the Ct. of K. B., of any proceedings had in pursuance of that Act. Where an order was made by two justices, & confirmed by the sessions, for diverting a road, professedly under the authority of, but, as was alleged, without pursuing all the formalities required by, the Act:—*Held*: the *certiorari* was still taken away, & after the proceedings had been in fact removed, the ct. would quash the *certiorari*, *quia improvide emanavit*, & refuse to discuss the sufficiency or insufficiency of the order.—*R. v. CASSON* (1823), 3 Dow. & Ry. K. B. 36; 1 Dow. & Ry. M. C. 486.

Annotations:—Distd. R. v. Somersetshire JJ. (1825), 6 Dow. & Ry. K. B. 469. Refd. R. v. Cambridgeshire JJ. (1835), 4 Ad. & El. 111. Mentd. R. v. Cook (1841), 5 Jur. 1181.

3093. ———.]—*R. v. SHEFFIELD RY. Co.*, No. 3026, *ante*.

3094. ———.]—Summary Jurisdiction Act, 1848 (c. 43), s. 27, provides that where quarter sessions, upon an appeal against an order, direct either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace, to be by him paid over to the party entitled:—*Held*: a mistake in ordering costs to be paid directly to the party to the appeal instead of to the clerk of the peace, was not a defect of jurisdiction, but merely erroneous procedure, & therefore, where such an order had been made under an Act taking away the *certiorari*, the ct. would refuse to set it aside when brought before them by *certiorari*.—*R. v. BINNEY* (1853), 1 E. & B.

3092 i. Informality of procedure—Not amounting to excess of jurisdiction.]—The erroneous allowance of certain items of costs being within the jurisdiction of a judge, will not, where *certiorari* is wholly taken away, affect the restriction.—*R. v. BROWN* (1888), 16 O. R. 41.—*CAN.*

3092 ii. ———.]—*R. v. Rood, R. v. McDONALD* (1895), 28 N. S. R. 159.—*CAN.*

3092 iii. ———.]—Where deft. appeared in the forenoon of the day (& before the hour for which he was summoned), pleaded guilty & paid his

finer, & was again at the proper hour convicted, the informations having been in the meantime amended; upon application to quash:—*Held*: the grounds were not such as to affect the jurisdiction so as to make 2 Edw VII. c. 12 inapplicable.—*R. v. RENAUD* (1909), 18 O. L. R. 420; 13 O. W. R. 1090.—*CAN.*

PART IX. SECT. 8, SUB-SECT. 1.

h. General rule—Not after verdict.]—*TULLY v. GLASS* (1833), 3 O. S. 149.—*CAN.*

3095 i. ——— *Not after judgment.]*—

810; 22 L. J. M. C. 127; 17 J. P. 440; 17 Jur. 854; 1 C. L. R. 236; 118 E. R. 640.

Annotation:—Refd. R. v. Winder, [1900] 2 Q. B. 666.

SECT. 8.—STAGE OF PROCEEDINGS AT WHICH WRIT GRANTED.

SUB-SECT. 1.—INFERIOR COURTS OF CIVIL JURISDICTION.

3095. General rule—Not after judgment—Judgment by default.]—It is a general rule that *certiorari* does not lie to remove a cause from an inferior ct. after judgment signed there, especially where deft. suffered judgment by default.—

WALKER v. GANN (1826), 7 Dow. & Ry. K. B. 769.

Annotations:—Distd. Godley v. Marsden (1830), 6 Bing. 433.

Apld. Smith v. Stocking (1835), 1 Har. & W. 194; *Kemp v. Balne* (1844), 1 Dow. & L. 885.

3096. ——— *Interlocutory judgment.]*—Where a cause was removed from an inferior ct. after interlocutory judgment, & before inquiry, the ct. refused to award a *procedendo*.—*GODLEY v. MARSDEN* (1830), 6 Bing. 433; 4 Moo. & P. 138; 8 L. J. O. S. C. P. 138; 130 E. R. 1347.

Annotation:—Consd. Smith v. Stocking (1835), 1 Har. & W. 194.

3097. ——— *Except to enforce execution.]*—The Act [21 Jac. 1, c. 23] restricts the removal of a cause to any time before judgment; after judgment it can only be removed by writ of error. We have no power therefore, except for the purpose of enforcing execution under the Act, to remove the proceedings after judgment, except by *certiorari* with a writ of error (*PARKE, B.*).—*LAWES v. HUTCHINSON* (1835), 1 Cr. M. & R. 766; 3 Dowl. 506; 5 Tyr. 236; 4 L. J. Ex. 59; 149 E. R. 1289.

3098. ———.]—The general rule is that no *certiorari* will issue to bring up the record of an inferior ct. after judgment.—*KEMP v. BALNE*, No. 2990, *ante*.

3099. Before issue joined—Statutory time limit—21 Jac. 1, c. 23, s. 2.]—W. sued out of the Tolzey Ct. of B. a writ of foreign attachment against O., & seized goods of his under it. The writ was returned on Feb. 14. On Feb. 17, B. filed a claim of property, alleging the goods to be his, & praying a return of them. To this W., on Apr. 10, replied, alleging that the property was in C., & not in B., concluding to the country, & added the *similiter*. On May 11, the suit was entered in the issue book for trial & it came on for trial on July 12, when B. tendered a *certiorari*, sued out *ex p.* in the ordinary way, in the Ct. of Hxch., to remove the suit then pending in the Tolzey Ct. under the title of W. plff., C. deft., & B. claimant. On a motion for an attachment against the judge of the Tolzey Ct. for refusing to receive this *certiorari*:—*Held*: B. was not entitled to sue it out, under sect. 2 of the above Act.

Semble: a writ of *certiorari* cannot be had by claimant of goods under a foreign attachment.

DOUGLAS v. HUTCHINSON (1837), 5 O. S. 341.—*CAN.*

3095 ii. ———.]—*McKENZIE v. KEENE* (1859), 5 U. C. L. J. O. S. 225.—*CAN.*

3095 iii. ———.]—*Re ERB* (No. 2) (1908), 12 O. W. R. 118, 16 O. L. R. 597.—*CAN.*

k. After judgment & appeal.]—*Re BATES* (1876), 40 U. C. R. 284.—*CAN.*

l. Even though appeal pending.]—*O'REILLY v. COYLE* (1902), 37 L. T. 10.—*IR.*

Sect. 8.—Stage of proceedings at which writ granted:
Sub-sect. 8. Sect. 9: Sub-sect. 1, A & B.]

BOROUGH CASE (1734), 2 Stra. 991; 1 Bott's Poor Law, 6th ed. 53; 93 E. R. 988; *sub nom.* R. v. WARWICK BOROUGH JJ., Cunn. 99.

*Annotation:—*Reid. R. v. Harman (1739), Andr. 343.

3119. —.]—A certiorari lies to remove an order of justices appointing overseers before appeal.—R. v. HARMAN (1739), 7 Mod. Rep. 287; Andr. 343; 87 E. R. 1246.

*Annotations:—*Reid. R. v. Willatts (1845), 14 L. J. M. C. 157. *Mentd.* R. v. Jones (1740), 7 Mod. Rep. 410.

3120. — Questions of fact in issue.]—Let it be a standing rule that no *certiorari* go to remove an order of two justices, till the matter be determined on appeal; & if they do, yet a *procedendo* may go. This ct. cannot meddle with matter of fact, & there is no remedy after because the next quarter sessions is over (*per Cur.*).—R. v. AILESBURY (INHABITANTS) (1700), Fortes. Rep. 309; 92 E. R. 865.

3121. — Where time limit imposed by statute.]—R. v. HOULDTCH (1740), 1 Bott's Poor Law 5th ed., Vol. 2, p. 761.

*Annotation:—*Reid. R. v. Willatts (1845), 14 L. J. M. C. 157.

3122. — Application by party in whose favour order made.]—The rule that a *certiorari* to remove an order for the purpose of quashing it, ought not to issue until the time for appealing against the order has expired, applies only where the *certiorari* is prayed for by the party in whose favour the order is made.—R. v. WILLATS (1845), 7 Q. B. 516; 1 New Mag. Cas. 340; 14 L. J. M. C. 157; 5 L. T. O. S. 172; 9 J. P. 361; 9 Jur. 509; 115 E. R. 583; *sub nom.* R. v. WOLLATTS, 2 New Sess. Cas. 5.

3123. Appeal pending.]—WARWICK BOROUGH CASE (1734), 2 Stra. 991; 1 Bott's Poor Law, 6th ed. 53; 93 E. R. 988; *sub nom.* R. v. WARWICK BOROUGH JJ., Cunn. 99.

*Annotation:—*Reid. R. v. Harman (1739), Andr. 343.

3124. —.]—R. v. HARMAN, No. 3119, *ante*.

3125. —.]—R. v. SPARROW & URQUHART (1787), 2 Term Rep. 196, n; 100 E. R. 106.

3126. —.]—Certiorari will not be granted to quash a conviction at petty sessions while an appeal to quarter sessions against the conviction is pending.—R. v. BARNES, *Ex p.* VERNON (LORD) (1910), 102 L. T. 860; 74 J. P. 231, D. C.

3127. Whether after appeal heard—With acquiescence of parties.]—R. v. EAST RIDING OF YORKSHIRE JJ., No. 2920, *ante*.

3128. —.]—The ct. will not grant a *certiorari* to remove an order of quarter sessions confirming an order of removal, upon the suggestion that the removing parish had fraudulently concealed the fact that the pauper's settlement had been adjudicated, on an appeal in another ct. on a settlement acquired since that upon which they last removed, to be in their parish.—R. v. BRISTOL (RECORDER) (1845), 5 L. T. O. S. 100; 9 J. P. Jo. 309.

3129. Where no appeal.]—R. v. EATON, No. 2468, *ante*.

3130. Not after order acted upon.]—This ct. will not issue a *certiorari* to bring up a distress warrant, issued by two justices of the peace, on an

order of the revising barrister for the payment of costs in pursuance of Parliamentary Voters Registration Act, 1843 (c. 18), ss. 46 & 71, on the ground of want of jurisdiction, after the warrant has been acted upon.—*Re* BRADLEY ETC., GLOUCESTER CITY JJ. (1863), 11 W. R. 640.

*Annotation:—*Reid. Jackson v. Roth (1918), 16 L. G. R. 907.

SECT. 9.—PROCEDURE.

SUB-SECT. 1.—CERTIORARI TO REMOVE FOR TRIAL IN CIVIL CASES.

A. The Application.

3131. To whom made—Judge in chambers—Cause in county court.]—The ct. will not entertain an application for a *certiorari* to remove a plaintiff from the county ct. under County Cts. Act, 1846 (c. 95), s. 90, it being the proper subject of an application to a judge at chambers.—ROBERTSON v. WOMACK (1850), 1 L. M. & P. 490; 19 L. J. Q. B. 367; 15 Jur. 579.

See, also, COUNTY COURTS, Vol. XIII., p. 544, Nos. 987, 987a.

What courts may issue writ.]—*See* Sect. 3, *ante*.

3132. How made—Ex parte—Cause in county court.]—SYMONDS v. DIMSDALE, No. 2489, *ante*.

3133. — — — —.]—The application to a judge for an order for a *certiorari* to remove a cause from the county ct. under County Cts. Act, 1846 (c. 95), s. 90, is *ex p.*—HADDON v. GOMPERTZ (1849), 12 L. T. O. S. 428; 13 J. P. Jo. 87.

3134. — Cause in Mayor's Court—Court of Chancery.]—JONES v. HEY, HEY v. BATE (1869), 17 W. R. 996.

*Annotation:—*Foll. Tracy v. Open Stock Exchange (1871), L. R. 11 Eq. 556.

3135. — — — —.]—Where a suit brought in the Mayor's Ct. was removed by writ of *certiorari* into the Ct. of Ch. & where it appeared upon the face of the bill in the Mayor's Ct. that some of plffs. were out of the jurisdiction of that ct. an order was made *ex p.*, without further evidence, that the suit in the Mayor's Ct. be retained in this ct.—TRACY v. OPEN STOCK EXCHANGE (1871), L. R. 11 Eq. 556; 40 L. J. Ch. 159; 19 W. R. 379.

3136. Time for making—Local court of record—Within six weeks of joinder of issue—21 Jac. 1, c. 23, s. 2.]—BRUCE v. WAIT, No. 3099, *ante*.

3137. — Mayor's Court, London—Within one month of service of plaint—Or before action entered for trial.]—With respect to actions in the Mayor's Ct. of London, Borough & Local Cts. of Record Act, 1872 (c. 86), does not override Mayor's Ct. of London Procedure Act, 1857 (c. clvii.), s. 17, under which the writ of *certiorari* removing the cause into a superior ct. must be lodged within one month after the service of the plaint, or before the action shall have been entered for trial.—PRICE v. SHAW (1888), 59 L. T. 480, D. C.

3138. — — — —.]—By Mayor's Ct. of London Procedure Act, 1857 (c. clvii.), s. 17, two alternative periods for lodging the writ of *certiorari* are limited, & consequently the writ may be lodged after the expiration of one month from service

PART IX. SECT. 8, SUB-SECT. 3.

3123 i. Appeal pending.]—The right to *certiorari* is taken away upon service of notice of appeal.—R. v. LYNCH (1886), 12 O. R. 372.—CAN.

3123 ii. —.]—R. v. HAINES, *Ex p.* MCCORQUINDALE (1908), 39 N. B. R.

49; 6 E. L. R. 374; 15 Can. Crim. Cas. 187.—CAN.

PART IX. SECT. 9, SUB-SECT. 1.—A.

p. Who entitled to apply to remove plaintiff when he has deliberately selected the inferior tribunal.]—Plff. is not entitled to a writ of *certiorari* to remove

his own plaint from an inferior ct. he having deliberately selected that tribunal for the trial of it.—PRUDHOMME v. LAZURE (1864), 3 P. R. 355.—CAN.

q. Time for making—Judge in chambers—Failure to move in prescribed time.]—*Re* BACKMAN'S ASSESSMENT (1921), 54 N. S. R. 148.—CAN.

of the plaintiff, provided the action shall not have been entered for trial.—*PRIM v. SMITH* (1888), 20 Q. B. D. 643; 57 L. J. Q. B. 336; 58 L. T. 606; 36 W. R. 530, C. A.

—*See, further, MAYOR'S COURT, LONDON. County court.*—*See COUNTY COURTS, Vol.*

XIII., pp. 483, 543, 544, Nos. 325, 981, 982, 984.

3139. Affidavits—Necessity for.—The writ of *certiorari* not being a ministerial writ, but a prerogative writ as *mandamus*, *habeas corpus*, etc. must have proper foundation on an affidavit, or on the face of the writ (LORD MANSFIELD, C.J.).—*R. v. PLUMBE* (1772), Lofft, 59; 98 E. R. 532.

3140. ————*See WILLIAMS v. THOMAS* (1782), 2 Doug. K. B. 751, n; 99 E. R. 479.

Annotations.—*Mentd.* Jones v. Davis (1822), 1 L. J. O. S. K. B. 54; Landens v. Shell (1834), 3 Dowl. 90.

3141. ———— *How intitled.*—Where a plaintiff is removed by *certiorari* out of the Brighton Ct. of Requests into the Q. B. the affidavit used on an application in the cause so removed may be intitled in the Q. B.—*FRANKS v. WICKS* (1841), 9 Dowl. 489; 5 J. P. 242; 5 Jur. 341.

Annotation.—*Mentd.* Neale v. Ellis (1843), 12 L. J. Q. B. 329.

3142. ————*See COLLIER v. LOVE*, No. 3166, *post*.

In support of application to remove indictments for trial.—*See Nos. 3210–3216, post.*

— In support of application for *certiorari* to quash.—*See Nos. 3394–3432, post.*

— In support of application to quash *certiorari*.—*See Nos. 3554, 3555, post.*

— In support of *certiorari* to remove depositions for bail.—*See Nos. 3629, 3630, post.*

— Necessity for stating all material facts.—*See COUNTY COURTS, Vol. XIII., p. 541, Nos. 986, 992.*

B. Recognisances.

Procedendo generally, *see* Sub-sect. 1, F., *post*.

3143. Necessity for—Inferior Courts Act, 1779 (c. 70), s. 6—Claim for £20—Procedendo not awarded.—Where *pltf.*, in an inferior jurisdiction, brought an action for £8 17s. 3d., but laid his damages in the declaration at £20, & *deft.*, after interlocutory judgment signed against him, removed the cause into the Ct. of K. B. by *habeas corpus cum causa*, without entering into the recognisances required by sect. 6 of the above Act, the ct. refused a *procedendo*.—*ATTERBOROUGH v. HARDY* (1824), 2 B. & C. 802; 4 Dow. & Ry. K. B. 362; 2 L. J. O. S. K. B. 172; 107 E. R. 581.

Annotation.—*Apld.* Brady v. Veeres (1836), 2 Har. & W. 320.

3144. ————*See* ————*Where the damages laid in the declaration are exactly £20, it is not necessary to enter into the recognisances required by sect. 6 of the above Act, & Imprisonment for Debt Act, 1827 (c. 71), s. 6, on removing the cause out of an inferior jurisdiction, even though *deft.* knows that a less sum is sought to be recovered.*—*BRADY v. VEERES* (1836), 2 Har. & W. 320.

3145. ———— *Frivolous Arrests Act, 1811 (c. 124), s. 3—Claim for £13—Procedendo awarded.*—Where *deft.* in an action brought in an inferior ct. for defamation, after entering a common

appearance & suffering judgment by default, removed the proceedings by *certiorari* into the Ct. of K. B. without entering into any recognisance:—*Held*: the case was within sect. 3 of the above Act & the ct. award a *procedendo* for the *deft.*'s default in not entering into the recognisance thereby required, the damages being laid only at £13.—*LEE v. GOODLAD* (1824), 4 Dow. & Ry. K. B. 350.

Annotation.—*Fold.* Franks v. Quince (1839), 2 Will. Woll. & H. 58.

3146. ———— *Imprisonment for Debt Act, 1827 (c. 71), s. 6—Claim under £20—Procedendo awarded.*—

Where an action of trover, in which the damages are laid under £20, is removed by *deft.* from an inferior into a superior ct., without entering into a recognisance to pay the debt & costs pursuant to sect. 6 of the above Act, *pltf.* is entitled to a *procedendo*.—*FURNISH v. SWANN* (1830), 10 B. & C. 458; 5 Man. & Ry. K. B. 452; 8 L. J. O. S. K. B. 224; 109 E. R. 521.

3147. ————*See* ————*CATTON v. FAIERS* (1837), Will. Woll. & Dav. 46; *sub nom.* COTTON v. BAIERS, 1 Jur. 22.

3148. ———— *Action for damages FRANKS.*

3149. Cause removed by one of two defendants—Bail must be found for both.—Where one of two *defts.* removes a cause from the Lord Mayor's Ct., a *procedendo* will be awarded, unless bail be put in for both.—*KEAT v. GOLDSTEIN* (1827), 7 B. & C. 525; 1 Man. & Ry. K. B. 305; 6 L. J. O. S. K. B. 33; 108 E. R. 819.

3150. Mayor's Court, London—On process of foreign attachment—Procedendo awarded on failure to put in special bail in court above.—(1) Where a suit in the Mayor's Ct., & a foreign attachment, issued according to the custom of the City of London, is removed into a superior ct. by *certiorari*, *pltf.* is entitled to a *procedendo*, unless *deft.* puts in special bail in the ct. above.

(2) A return was made omitting to show that the garnishee resided within the jurisdiction of the Mayor's Ct.:—*Held*: no objection to the return, which was in the usual form.—*DAY v. PAUPIERRE* (1849), 13 Q. B. 802; 18 L. J. Q. B. 270; 14 L. T. O. S. 64; 14 Jur. 40; 116 E. R. 1470.

Annotations.—*As to* (1) *Consd.* London Corpn. v. Cox (1867), L. R. 2 H. L. 239. *Reid.* Bastow v. Gant (1852), 13 Q. B. 807. *Generally, Mentd.* Re Wilkins (1873), 27 L. T. 825; London Joint Stock Bank v. London Corpn. (1875), 1 C. P. D. 1.

—*The rule which requires* *deft.* in the Mayor's Ct. to put in special bail in order to dissolve a foreign attachment issued by that ct. against his goods, applies to a case in which *deft.* is sued as exor. or administrator, & if the suit is removed by *certiorari*, a *procedendo* will issue, unless special bail be put in in the superior ct.—*BASTOW v. GANT* (1852), 13 Q. B. 807; 21 L. J. Q. B. 377; 19 L. T. O. S. 156; 17 Jur. 299; 116 E. R. 1472.

Annotation.—*Reid.* Levy v. Lovell (1880), 42 L. T. 242.

3152. Irregularity in form of bond—Waived by proceeding in superior court.—On the removal of a *replevin* suit from a county ct. into a superior

3139 i. Affidavits—Necessity for.—No *certiorari* should issue in a civil suit, without an affidavit showing sufficient grounds in the estimation of the judge who grants it.—*CRAWLEY v. ANDERSON* (1868), 7 N. S. R. 385.—*CAN.*

3141 i. ———— *How intitled.*—Affidavits under 13 & 14 Vict. c. 53, s. 85, to remove a cause, must be intitled in the ct. in which the motion is made, not in the ct. from which removal is

sought.—*SMYTH v. NICHOLLS* (1855), 1 P. R. 355.—*CAN.*

3141 ii. ————*See* ————*Affidavits supporting an application for certiorari in a civil suit should not be intitled in the cause: after the cause is brought up they must be so intitled.*—*CRAWLEY v. ANDERSON* (1868), 3 R. & C. 37.—*CAN.*

PART IX. SECT. 9, SUB-SECT. 1.—B. *Necessity for—Local Government*

(Ireland) Act, 1871.—Where a conditional order has been granted for a writ of *certiorari* to remove any allowance, disallowance, or surcharge by a local govt. board auditor under ss. 11–18 of above Act, the ct. has jurisdiction to stay the issue of the conditional order until prosecutor perfects an effective recognisance.—*R. v. BAKER*, [1910] 2 I. R. 187; 44 I. L. T. 77.—*IR.*

Sect. 9.—Procedure: Sub-sect. 1, B., C., D., E., F.

ct., under County Cts. Act, 1846 (c. 95), ss. 121 & 127, the judge of the county ct., instead of taking the bond to the other party to the suit, as required by sect. 127, took it to himself as his trustee. The suit was prosecuted in the ct. above, but without effect, & the bond thereupon became forfeited, & the judge of the county ct. brought an action upon the bond:—*Held*: the irregularity in the proceedings, in not removing the suit by a *certiorari* founded on a proper bond, had been waived by the proceedings taken in the ct. above.—*STANSFELD v. HELLAWELL* (1852), 7 Exch. 373; *Saund. & M.* 8; 21 L. J. Ex. 148; 19 L. T. O. S. 112; 16 J. P. 345; 16 Jur. 317; 155 E. R. 992.

In county court.—*See* County Cts. Act, 1888 (c. 43), ss. 108, 109, 137; COUNTY COURTS, Vol. XIII., pp. 476, 545, Nos. 253, 1004–1006; CORPORATIONS, Vol. XIII., p. 378, No. 1088.

C. The Writ.

3153. Form of—Description of court.—A writ to remove proceedings before a mayor, aldermen, bailiffs & citizens, will not remove proceedings upon a plaint levied at a ct. held before the deputy mayor & bailiffs only.—*WATSON v. HUDDLESTON* (1701), 1 Ld. Raym. 703; 91 E. R. 1369.

3154. Direction of—Error waived by return by proper officer.—Third persons cannot object to the misdirection of a *certiorari* to remove a cause from an inferior ct., if the proper officers, in whose keeping the record was, waive the objection, & return the record upon such writ.—*DANIEL v. PHILLIPS* (1792), 4 Term Rep. 499; 100 E. R. 1141.

3155. Service of—County court judge—Sufficiency of service on clerk.—Leaving the writ of *certiorari* with a clerk at the office of the chief clerk of the county ct. is sufficient without personal service on the judge, but, if the judge omit to return a writ so served, an attachment cannot issue without first ruling him to return the writ.—*BROOKMAN v. WENHAM* (1851), 2 L. M. & P. 233; 20 L. J. Q. B. 278; 16 L. T. O. S. 492; 15 Jur. 249; *sub nom. Ex p. WENHAM*, *BROOKMAN v. WENHAM*, *Rob. L. & W.* 539; 15 J. P. Jo. 98.

D. The Return.

3156. Whether copy of record sufficient.—*WOODCRAFT v. KINASTON*, No. 2431, *ante*.

3157.—The return of a *certiorari* must return the record itself, & not set it out according to its tenor.—*ASKEW v. HAYTON* (1832), 1 Dowl. 510.

3158. Case commenced by foreign attachment in Mayor's Court—Return not showing garnishee resident within jurisdiction.—*DAY v. PAUPIERRE*, No. 3150, *ante*.

Fees for return in county court.—*See* COUNTY COURTS, Vol. XIII., p. 556, No. 1145.

E. Quashing the Writ.

3159. Grounds for—Certiorari not proper remedy.—*HIGHMORE v. BARLOW* (1750), *Barnes*, 421; 94 E. R. 985.

3160.—Writ issued for purposes of delay.]—

The ct. will not quash a writ of *certiorari*, unless there is an admission or something tantamount to it, by the party suing it out, that it was issued for the purpose of delay.—*LANDENS v. SHEIL* (1834), 3 Dowl. 90.

3161.—Writ issued by mistake—No action taken upon writ.]—Where deft. who has improperly sued out a *certiorari* seeks to quash his writ, no step having been taken on it, the rule is absolute for that purpose, in the first instance.—*RUFFMAN v. THORNWELL* (1839), 7 Dowl. 613; 2 Will. Woll. & H. 51.

3162.—Affidavit not disclosing full facts.]—Where a *certiorari* had issued by leave of a judge under County Cts. Act, 1846 (c. 95), s. 90, to remove a plaint from a county ct., upon an affidavit which did not disclose certain facts which might have induced the judge to impose terms, as to costs, upon the party applying, the ct. quashed the writ.—*PARKER v. BRISTOL & EXETER RY. CO.* (1851), 6 Exch. 184; 2 L. M. & P. 136; *Cox, M. & H.* 435; *Rob. L. & W.* 559; 20 L. J. Ex. 112; 16 L. T. O. S. 393; 15 J. P. Jo. 99; 155 E. R. 506; *sub nom. PARKER v. GREAT WESTERN RY. CO.*, 15 Jur. 109.

Annotation:—*Refd. Brookman v. Wenham* (1851), 2 L. M. & P. 233.

3163.—Bond not entered into.]—*MUNGEAN v. WHEATLEY*, No. 3194, *post*.

3164.—Where action put an end to—Notice under Justices Protection Act, 1848 (c. 44), s. 10.]—A justice of the peace sued in a county ct. for an act done in the execution of his office, having given notice, under the above Act, that he objects to being sued in the county ct. cannot after such notice remove the plaint into the superior ct. by *certiorari*.—*WESTON v. SNEYD* (1857), 1 H. & N. 703; 2 *Saund. & M.* 185; 26 L. J. Ex. 161; 28 L. T. O. S. 293; 21 J. P. 198; 5 W. R. 317; 156 E. R. 1384.

3165. Writ may be quashed—Though party entitled to procedendo.—If a cause has been removed by *certiorari* from an inferior ct., after judgment, a rule may be granted for quashing the *certiorari*, though the party is entitled to a rule for a *procedendo*.—*ORD v. ROBINSON* (1837), *Will. Woll. & Dav.* 593.

F. The Writ of Procedendo.

3166. Application for—Must be made to judge who granted certiorari.—Where one judge at chambers has made an order for a *certiorari*, another judge will not make an order for a *procedendo*, & the matter coming up from the county ct. the affidavits should be entitled in the ct. only.—*COLLIER v. LOVE* (1848), 11 L. T. O. S. 107.

3167. Grounds for issue—Bill in Chancery—Covering matters not in dispute in court below.—*RICE v. JAQUIS* (1663), 1 Cas. in Ch. 31; 22 E. R. 678, L. C.

3168.—Discretion of court.]—If upon a *certiorari* bill the cause is brought on to hearing, the ct., if they think fit, may make a decree, or send it back to the Mayor's Ct. to be determined there, & sometimes the ct. sends it back after publication passed, & a *subpoena* served to hear judgment, & before the hearing.—*STEPHENSON v. HOULDITCH* (1704), 2 Vern. 491; 23 E. R. 915.

PART IX. SECT. 9, SUB-SECT. 1.—C.

s. Direction of.]—A writ of *certiorari* to bring up papers from the county ct. should be directed to the clerk of that ct.—either by name, adding the name of his office, or by the name of his office alone.—*LUNN v. WINNIPEG* (1885), 2

Man. L. R. 225.—CAN.**PART IX. SECT. 9, SUB-SECT. 1.—E.**

3159 i. Grounds for—Certiorari not proper remedy.]—*ANON. v. M'LOWRY* (1837), *Craw. & D. Abr. C.* 104.—*IR.*

t. — Not signed by
R. v. WARD (1888), 21 N. S. R.

19.—CAN.

s. — Writ merely formal or frivolous.]—The grounds disclosed in the affidavit for *certiorari* being merely formal or frivolous, the *certiorari* should be quashed.—*BLOIS v. RICHARDS* (1879), 1

3169. — Notice of certiorari not given till day before trial.]—Without notice or any special reason, *certiorari* was delivered to the judges of the Ct. of Great Sessions, in Wales, on the day before a trial, but this ct. quashed the *certiorari*, & directed a *procedendo* to issue, & also ordered the party to pay the costs of the proceedings below, & the costs of the application.—*JONES v. DAVIES* (1822), 1 B. & C. 143; 1 L. J. O. S. K. B. 54; 107 E. R. 54.

Annotations:—*Reid*. *Patterson v. Eades* (1824), 3 B. & C. 550; *Landens v. Shell* (1834), 3 Dowl. 90; *R. v. Passman* (1834), 1 Ad. & El. 603; *R. v. Higgins* (1836), 5 Ad. & El. 554.

3170. — Cause removed without notice to plaintiff's attorney—Though cause entered for trial.]—*Certiorari* to remove a cause from the Great Sessions for the county of C., without any previous notice to pltf.'s attorney, after the cause was entered for trial & briefs delivered to counsel, & when witnesses were attending for pltf., superseded on motion to this ct., & a *procedendo* ordered, & the costs of the day in the Ct. of Great Sessions, & the costs of this application ordered to be paid by deft.—*STACEY v. EVANS* (1824), 13 Price, 449; 147 E. R. 1045.

Annotations:—*Reid*. *Landens v. Shell* (1834), 3 Dowl. 90; *R. v. Higgins* (1836), 5 Ad. & El. 554.

3171. — *Certiorari* received after time limited by statute—Though record filed in meantime.]—If the judge of an inferior ct. of record receives a *certiorari* after the time limited by 21 Jac. 1, c. 23, s. 2, a *procedendo* will issue, although in the meantime the record has been filed in the ct. above.—*LAVERACK v. BEAN* (1837), 3 M. & W. 62; 6 Dowl. 111; *Murp. & H.* 338; 7 L. J. Ex. 10; 1 Jur. 964; 150 E. R. 1057.

3172. — Avoidance of delay—& two trials—Not sufficient.]—Where one of several defts. has removed an indictment from quarter sessions by *certiorari*, & entered into a recognisance according to the statutes, to go to trial at the sittings after term, the ct. will not, on the application of prosecutor, & merely on the ground that there must be two trials, or that the trial of the indictment will be otherwise delayed, grant a rule to show cause why a *procedendo* should not issue, unless the other defts. appear & plead & take short notice of trial for the same time.—*R. v. HUNT* (1837), 6 Dowl. 5; *sub nom.* *R. v. NEWTON*, 2 Nev. & P. K. B. 121; *Will. Woll. & Dav.* 497; 6 L. J. M. C. 104; 1 Jur. 772.

Want of recognisances, see Sub-sect. 1, B., *ante*.

3173. Grounds for refusal—Barrister of three years' standing not present at trial—21 Jac. 1, c. 23, s. 6.]—*Procedendo* denied to a borough ct. that had tried a cause without the presence of a barrister of three years' standing as required by sect. 6 of the above Act.—*FAIRLEY v. M'CONNELL* (1758), 1 Burr. 514; 97 E. R. 425.

3174. — Stay of proceedings in inferior cause.]—*WHARRIL v. DRIVER* (1844), 2 L. T. O. S. 314.

3175. Effect of—Cause cannot be again brought up.]—A cause remanded to an inferior ct. by *procedendo* cannot be again removed into this ct. upon the ground of its alleged importance.—*HAYWARD v. WRIGHT* (1828), 8 B. & C. 386; 2 Man. & Ry. K. B. 366; 6 L. J. O. S. K. B. 359; 108 E. R. 1086.

G. Effect of Removal.

3176. Proceedings in court below—Attachment on goods put an end to.]—*LOVERIDGE v. WHITROW* (1698), 12 Mod. Rep. 213; 88 E. R. 1270.

3177. — *Certiorari* to remove all pleas lately levied—Removes pleas levied before return.]—(1) *Certiorari* lies to all inferior jurisdictions.

(2) A *certiorari* lies from the ct. of C. P. to remove an action from the ct. of the Isle of Ely.

(3) A *certiorari* to remove all pleas lately levied removes a plea levied between the teste & the return.—*SMITH v. CROSS* (1703), 7 Mod. Rep. 138; 27 E. R. 1140.

Raym. 836; 12 Mod. Rep. 643; 1 Salk. 148; 3 All. 70.

Annotations:—*As to* (3) *Reid*. *Keeling v. Elliot* (1754), *Barnes*, 399. *Generally*, *Mentd.* *Cheetham v. Crook* (1825), *M'Cle. & Yo.* 307.

3178. — — — — —.]—A *certiorari* to remove an inquisition *nuper capiam* will remove one taken after the teste of the *certiorari*, if it be taken before the return.—*ANON.* (1709), 2 Ld. Raym. 1305; 92 E. R. 355.

3179. — Inquisition of forcible detainer—Justices cannot award restitution.]—After *certiorari* to remove inquisition of forcible detainer, justices cannot award restitution.—*KNELLER'S CASE* (1706), 1 Salk. 151; 91 E. R. 140.

Annotation:—*Mentd.* *Roach v. Garvan* (1748), 1 Ves. Sen. 157.

3180. — Record & cause removed.]—A *habeas corpus* does not remove the record as well as the cause, as a *certiorari* does.—*LEATHERINGTON v. REYNOLDS* (1707), *Fortes. Rep.* 269; 92 E. R. 848.

3181. — Ball discharged—Indictment removed by prosecutor.]—*KEELING v. ELLIOTT* (1754), *Barnes*, 399; 94 E. R. 974.

3182. — — — — —.]—Ball entered into in superior court.]—Upon removal of a cause by *certiorari* out of the inferior ct., the pledges below are discharged by putting in & perfecting bail above.—*TAYLOR v. SHAPLAND* (1814), 3 M. & S. 328; 105 E. R. 635.

3183. — — — — —.]—Ball not transferred to superior court.]—Pltf., in an action against deft. in the Mayor's Ct. for £80, attached deft.'s balance at her bankers, within the jurisdiction of the Mayor's Ct. Deft. paid £80 into ct. in lieu of special bail, discharged the attachment, & pleaded coverture. The action failed. Thereupon pltf. filed a bill against deft. on the equity side of the Mayor's Ct., which was removed by *certiorari* into the Ct. of Ch. On motion on behalf of pltf., to have the £80 standing in the Mayor's Ct. paid into the Ct. of Ch.:—*Held*: the motion would be refused.—*MACHENRY v. DAVIES* (1868), L. R. 6 Eq. 462.

3184. Proceedings after removal—Whether begun de novo—Effect on declaration.]—Replevin by plaintiff in an inferior ct. was removed into the K. B. by *certiorari*, & upon the removal pltf. changed his declaration:—*Held*: this could not be, for whatever was below ought to be now here.—*ANON.* (1701), 12 Mod. Rep. 453; 88 E. R. 1446.

3185. — — — — —.]—After a *certiorari* returned, whereby the proceedings in an inferior ct. of record were removed into this ct., the question was, whether or no pltf. should declare *de*

PART IX. SECT. 9, SUB-SECT. 1.—F.

3171 i. Grounds for issue—*Certiorari* not delivered in time—Though record filed in meantime.]—A *certiorari* must have been delivered to the proper officer before the entry of judgment, otherwise a *procedendo* will be

ordered, even though the record has been returned & filed.—*BARNES v. COX* (1866), 16 C. P. 236.—*CAN.*

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b. Proceeding in court below.]—Proceedings in the ct. below after

removal of the cause into the superior ct. are of no avail.—*BARNES v. COX* (1866), 16 C. P. 236.—*CAN.*

3184 i. Proceedings after removal—Whether begun de novo—Effect on declaration.]—Pltf. must declare *de novo*.—*PATTERSON v. SMITH* (1864), 14 C. P. 535.—*CAN.*

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novo, it appearing by the return that the parties were at issue in the ct. below:—**Held:** pltf. must declare *de novo*.—**TURNER v. BEAN** (1739), 1 Barnes, 345; 91 E. R. 947.

3186. ————.]—Pltf. having declared in an action commenced in an inferior ct., which is afterwards removed to a superior ct., is not obliged to adopt his original declaration. He must declare *de novo*, & may declare in a way different from that which he at first adopted.—**ASHLEY v. ASHLEY** (1867), 17 L. T. 265.

3187. ———— **Inquisition of forcible entry—Restitution may be immediately awarded.**—The ct. may award restitution immediately after *certiorari* in forcible entry is filed, unless deft. plead three years quiet possession.—**HARDESTY v. GOODENOUGH** (1703), 7 Mod. Rep. 138; 87 E. R. 1148.

3188. ———— **Plaintiff not compelled to follow cause—No judgment for defendant.**—Where deft. removes proceedings from an inferior ct. by *certiorari*, pltf. is not bound to follow the suit. In such case, if deft. signs judgment of *non-pros.*, for want of a declaration, he is irregular, & is not entitled to costs.—**CLERK v. BERWICK CORPN. & SAUNDERSON** (1825), 4 B. & C. 649; 107 E. R. 1202; *sub nom.* **CLARK v. BERWICK-UPON-TWEED CORPN. & SAUNDERSON**, 7 Dow. & Ry. K. B. 104; 4 L. J. O. S. K. B. 36.

3189. ————.]—Deft. having removed from the county ct. by *certiorari*, under County Cts. Act, 1856 (c. 108), s. 38, a plaintiff for a claim not exceeding £5, pltf. is not bound to follow the action into the superior ct., & deft., after notice to pltf. to declare, is not entitled to sign judgment.—**GARTON v. GREAT WESTERN RY. CO.** (1858), 1 E. & E. 258; 28 L. J. Q. B. 103; 32 L. T. O. S. 126; 5 Jur. N. S. 595; 7 W. R. 63; 120 E. R. 906. **Annotation:**—**Apprvd. Harrison v. Bull & Bull**, [1912] 1 K. B. 612.

3190. ———— **Defendant cannot get directions.**—An action commenced in the county ct. was removed under an agreement of the parties into the K. B. Div. by a writ of *certiorari*. Pltf., not having taken any step in the action after the removal, defts. took out a summons for directions under R. S. C., Ord. 30:—**Held:** pltf. could not be compelled to proceed with the action in the K. B. Div., & defts. were not entitled to an order upon the summons taken out by them.—**HARRISON v. BULL & BULL**, [1912] 1 K. B. 612; 81 L. J. K. B. 656; 106 L. T. 396; 28 T. L. R. 223; 56 Sol. Jo. 292, C. A.

3191. ———— **Application to fix venue must be by separate motion.**—**THOMAS v. VICE**, No. 2503, *ante*.

3192. ———— **Conducted according to practice of High Court—Discovery.**—In an action for the recovery of land, commenced by plaintiff in a county ct. & afterwards transferred to the Ch. Div., the proceedings after transfer will be conducted according to the practice of the High Ct., so that pltf. is not entitled to discovery & production until he has delivered a statement of claim in the action.—**DAVIES v. WILLIAMS** (1879), 13 Ch. D. 550; 49 L. J. Ch. 352; 42 L. T. 469; 28 W. R. 223.

H. Enforcement of Writ—Attachment.

See, generally, CONTEMPT OF COURT, ATTACHMENT & COMMITTAL, pp. 46 *et seq.*, *ante*.

3193. **Refusal to receive writ.**—**BRUCE v. WAIT**, No. 3099, *ante*.

3194. Failure to make return by judge—Disobedience not wilful.—A plaintiff in replevin & for an excessive distress having been entered in a county ct. against a landlord & bailiff, defts., by leave of a judge, on affidavit that the rent exceeded £20, sued out a writ of *certiorari* to remove the cause into the Ct. of Exch. The writ was returnable on the day the plaintiff stood for trial, & the defts.' attorney then presented the writ to the judge, & offered, on the part of one of defts., to make the declaration required by County Cts. Act, 1846 (c. 95), s. 121, stating that the other deft., the bailiff, was unable to make it. Deft., the landlord, was too ill to attend, but he had executed a power of attorney to one W., authorising him to sign & seal the bond required by the above sect., & generally to perform all such acts about the conduct of the writ as he should think proper. Defts.' attorney tendered the bond, which was conditioned to prove, in the superior ct., that the rent exceeded £20, but the clerk of the ct. did not approve of the sureties, in consequence of not having had notice of them in time to inquire into their sufficiency. The judge refused to allow the *certiorari*, & tried the cause on the ground of the want of time for the clerk of the ct. to inquire into the sufficiency of the sureties, but he did not fix the amount for which they were to be responsible:—**Held:** (1) there was no ground for quashing the writ of *certiorari*; (2) the judge was liable to an attachment for not receiving & returning the writ, although his disobedience was not wilful, but originated in an erroneous construction of an obscure statute; (3) the declaration required by sect. 121 of the Act might be verbally made, either by the attorney in the cause or the party, it was sufficient if made by one of several defts., & in this case, the person named in the power of attorney was authorised not only to sign & seal the bond, but also to make the declaration.—**MUNGEAN v. WHEATLEY** (1851), 6 Exch. 88; 2 L. M. & P. 30; Rob. L. & W. 515; Cox, M. & H. 445; 20 L. J. Ex. 106; 16 L. T. O. S. 370; 15 J. P. 195; 15 Jur. 110; 155 E. R. 465.

3195. ———— **Necessity for personal service.**—**BROOKMAN v. WENHAM**, No. 3155, *ante*.

I. Costs.

3196. Certiorari delivered day before trial—Cause removed without special grounds—Or notice to opposite party—Costs incurred in court below.—A *certiorari*, issued to remove a cause from the Ct. of Great Sessions in Wales without any special ground for so doing, & without any notice having been given to the opposite party, but was not delivered to the judges of that ct. till the day before the trial would in course have taken place, & after great expenses had been incurred. Under these circumstances this ct. not only quashed the *certiorari*, & directed a *procedendo* to issue, but ordered that the party who caused it to issue should pay to the opposite party the costs incurred by the latter in the ct. below.—**JONES v. DAVIES** (1822), 1 B. & C. 143; 1 L. J. O. S. K. B. 54; 107 E. R. 54. **Annotations:**—**Consd. R. v. Passman** (1834), 1 Ad. & El. 603. **Reid. Patterson v. Eades** (1824), 3 B. & C. 550; **Landens v. Shell** (1834), 3 Dowl. 90; **R. v. Higgins** (1836), 5 Ad. & El. 551.

3197. Action removed by defendant—Whether defendant entitled to costs on higher court scale—Under 43 Geo. 3, c. 46, s. 3.—Deft. who removes into one of the superior cts. a cause commenced in an inferior ct. is not entitled to the remedy given

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3197 I. Action removed by defendant—Whether defendant entitled to costs on higher court scale.—**CORLEY v. ROBLIN** (1859), 5 U. C. L. J. O. S. 225.—**CAN.**

by 43 Geo. 3, c. 46, s. 3, when it appears *pltf.* has arrested him without probable cause for a larger sum than *pltf.* has recovered.—*HANDLEY v. LEVY* (1828), 8 B. & C. 637; 3 Man. & Ry. K. B. 37; 7 L. J. O. S. K. B. 90; 108 E. R. 1179.

3198. — Under Bankruptcy Law Consolidation Act, 1849 (c. 106), s. 86.—The above Act does not apply to cases where the action has been removed by *deft.* from an inferior ct.—*WOODALL v. VOIGT* (1860), 6 H. & N. 153; 3 L. T. 334; 6 Jur. N. S. 1162; 9 W. R. 57; 158 E. R. 63.

3199. — Whether plaintiff entitled to costs—Under County Courts Act, 1867 (c. 142), s. 5.—The above Act applies to an action commenced in an inferior ct. & removed into a superior ct. by *certiorari* on the application of *deft.*—*PELLAS v. BRESLAUER* (1871), L. R. 6 Q. B. 438; 40 L. J. Q. B. 161; 24 L. T. 762; 19 W. R. 779.

Annotation :—*Mentd. Flitters v. Alfrey* (2) (1874), 31 L. T. 881.

3200. Action removed by plaintiff—Whether costs below costs in cause.—*Qu.* : whether General Rule of Hilary Term 1853, which provides that if a cause be removed from an inferior ct. having jurisdiction of the cause, the costs in the ct. below shall be costs in the cause, applies where the *certiorari* is obtained by *pltf.*—*COX v. LEECH* (1857), 1 C. B. N. S. 617; 26 L. J. C. P. 125; 28 L. T. O. S. 370; 3 Jur. N. S. 442; 5 W. R. 199; 140 E. R. 254.

3201. Set-off of costs—Costs in High Court against costs in county court.—Under R. S. C., Ord. 85, r. 14, the costs of an unsuccessful application by *deft.* for a *certiorari* to remove a county ct. action to the High Ct. cannot be set off against the costs subsequently ordered to be paid by *pltf.* on the action in the county ct. being dismissed, inasmuch as the application for the *certiorari* & the county ct. action are distinct & independent proceedings.—*HASSELL v. STANLEY*, [1898] 1 Ch. 607; 65 L. J. Ch. 494; 74 L. T. 375; 44 W. R. 405; 40 Sol. Jo. 356.

Annotations :—*Reid. David v. Reese*, [1904] 2 K. B. 435; *Reid v. Cupper*, [1915] 2 K. B. 147.

Security for costs as term for granting certiorari.—See COUNTY COURTS, Vol. XIII., p. 545, Nos. 1004–1006.

Plaintiff not compelled to follow cause after removal.—See Nos. 3188–3190, *ante*.

Effect of Judicature Acts.—See Nos. 3737–3743, *post*.

Non-repair or obstruction of highway, bridge or river.—See Costs in Criminal Cases Act, 1908 (c. 15), s. 9 (3).

SUB-SECT. 2.—CERTIORARI TO REMOVE INDICTMENTS FOR TRIAL.

A. The Application.

(a) In General.

See, now, C. O. R., rr. 12, 19.

3202. To what court made—Not to Court of Chancery.—*R. v. STEERS* (1728), 1 Barn. K. B. 105; 94 E. R. 73.

What courts may issue writ, see Sect. 3, *ante*.

3203. Time for making—Not at end of term—If delay of trial results.—Motion for a *certiorari* to remove an indictment found at assizes in K. against A. & others :—*Held* : because the motion happened at the end of term & would occasion a delay of justice the motion would be denied, otherwise it would have been granted.—*R. v. KNATCHBULL* (1704), 1 Salk. 150; 91 E. R. 139.

3204. Who entitled to apply—Plaintiff—Not

defendant—Indictment for perjury.—Though *pltf.* may, yet *deft.* cannot, by *certiorari* remove an indictment for perjury found at the Old Bailey.—*R. v. LILLY* (1734), Cunn. 38; 94 E. R. 1048.
Certiorari to quash, see Sub-sect. 3, *post*.

3205. — Without consent of prosecutor—Indictment for felony.—A *certiorari* does not lie to remove an indictment for felony from a general sessions of oyer & terminer, at the instance of *deft.*, without the consent of prosecutor.—*R. v. KINGSTON* (DUCHESS) (1775), 1 Cowp. 283; 98 E. R. 1087; *subsequent proceedings* (1776), 20 State Tr. 355.

3206. Indictment against several defendants—Concurrence of all essential—Affidavit of consent.—A *certiorari* will not be granted to remove an indictment against several *defts.* charged with a misdemeanour, unless they all concur in the application; & it seems that a consent by counsel is not sufficient, unless supported by an affidavit of the consent.

The ct. will remove an indictment for a misdemeanour from Lancashire to Yorkshire, if there is any reasonable cause of suspicion or apprehension that justice will not be impartially administered in the former county.—*R. v. HUNT* (1820), 3 B. & Ald. 444; 2 Chit. 130; 1 State Tr. N. S. 171, 175; 106 E. R. 725; *subsequent proceedings*, 3 B. & Ald. 566.

Annotations :—*Conrad. R. v. Connop* (1836), 2 Har. & W. 81; *R. v. Hunt* (1837), 6 Dowl. 5; *R. v. Newton* (1837), 2 Nev. & P. K. B. 121. *Reid. R. v. Holden* (1833), 5 B. & Ad. 347; *R. v. Wilks* (1855), 5 E. & B. 690; *R. v. Sheldon* (1875), 32 L. T. 27. *Mentd. A.-G. v. Churchill* (1841), 8 M. & W. 171.

3207. —.—The Ct. of K. B. will under special circumstances remove an indictment for a misdemeanour from the Central Criminal Ct.

On a motion for a writ of *certiorari* to remove an indictment for conspiracy to procure divorce from the Central Criminal Ct. on the grounds that difficult & important questions would arise as to the law of marriage & divorce & that the opinion that a judge of K. B. could be reviewed by four judges *in banc*, & *deft.* being also desirous of being tried by a special jury :—*Held* : as this was an indictment for a misdemeanour the writ would be allowed.

Subsequently an application was made for a *procedendo*, it appearing that the application for the *certiorari* had not been made at the instance of all *defts.*

I would not have granted the *certiorari* if I had known this (PATTESON, J.).—*R. v. CALDECOTT* (1835), 3 Dowl. 315.

Annotation :—*Reid. R. v. Connop* (1836), 2 Har. & W. 81.

3208. —.—The ct. will permit a suggestion to be entered on the record, for the purpose of carrying the trial of a misdemeanour into an adjoining county, on the application of one of several *defts.*, although it does not appear upon affidavit, that the others have assented to the application, if there is no reason for believing that they dissent.

It is the consistent practice to grant the rule upon the application of one *deft.*, unless we see reason to think that the other does not consent (LORD DENMAN, C.J.).—*R. v. BROWNE* (1842), 6 Jur. 168.

3209. Hearing will not be accelerated—Though delay may cause inconvenience.—HARROW LOCAL BOARD v. KENCH (1886), 2 T. L. R. 647, D. C.

(b) Affidavits in Support.

See, now, C. O. R., rr. 13, 234.

3210. Necessity for.—The ct. will grant a rule, without notice, for a *certiorari* to remove presentments made to the Comrs. of Sewers, though not

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on the first motion, but there must be an affidavit made of the things being repaired, before the ct. grants the rule.—ANON. (1729), Sess. Cas. K. B. 93; 93 E. R. 94.

3211. — Where right of Crown in dispute.]—On the motion of the A.-G. for a *certiorari* to remove an indictment, the right of the Crown having been mentioned by him to be in dispute:—*Held*: a *certiorari* for removing an indictment might be awarded upon the motion of the A.-G. without any affidavit.—R. v. BURGESS (1754), 1 Keny. 135; Dunning, 22; Say. 128; 96 E. R. 942.

Annotation:—Consol. R. v. Amendt (1915), 84 L. J. K. B. 1259.

3212. — — —.]—A *certiorari* to remove an indictment of an excise officer from sessions was granted on the motion of the A.-G. without any affidavit.—R. v. STANNARD (1791), 4 Term Rep. 161; 100 E. R. 950.

3213. — Stating concurrence of all defendants—Removal of indictment against several defendants.]—R. v. HUNT, No. 3206, *ante*.

3214. Contents of—Must state grounds of application—& points of difficulty.]—On moving for a *certiorari* to remove an indictment for perjury from the Central Criminal Ct., it must be stated on affidavit what are the points of difficulty which are likely to arise.—R. v. JOSEPH (1838), 8 Dowl. 128; 1 Will. Woll. & H. 419; 2 J. P. 727.

3215. — — —.]—*Re* BARKER, No. 2598, *ante*.

3216. — — — Criminal Procedure Act, 1853 (c. 30), s. 4.]—The affidavit in support of an application for a *certiorari* to remove an indictment for misdemeanour should be brought within the terms of the above Act.—R. v. RUSSELL (1854), 2 W. R. 171; 18 J. P. Jo. 40; *subsequent proceedings*, 3 E. & B. 942.

See, now, C. O. R., r. 13.

On application to remove for trial in civil cases.]—*See* Nos. 3139–3142, *ante*.

On application for certiorari to quash.]—*See* Nos. 3394–3432, *post*.

On application to quash certiorari.]—*See* Nos. 3554, 3555, *post*.

On application to remove depositions for bail.]—*See* Nos. 3629, 3630, *post*.

B. Effect of Order Nisi.

3217. Stays proceedings—Until order disposed of.]—The granting of an order *nisi* for a writ of *certiorari* to remove an indictment into the Q. B. Div. is a stay of all proceedings until the order *nisi* has been disposed of.—R. v. GARRETT (1886), 2 T. L. R. 721, D. C.

C. Recognisances.

See, now, C. O. R., rr. 14–16, 112, 121.

3218. Effect of not entering into.]—A *certiorari* to remove an indictment is not a *supersedeas*, unless recognisance is entered into in £20.—R. v. EWER (1702), 2 Salk. 564; 2 Ld. Raym. 756; 7 Mod. Rep. 9; Holt, K. B. 612; 91 E. R. 475.

3219. —.]—A *certiorari* is no *supersedeas*, if there be no recognisance.—R. v. BOTHELL (1703), 6 Mod. Rep. 33; 1 Salk. 149; 87 E. R. 797.

3220. —.]—Justices of peace need not sign the return of *certiorari*.

A *certiorari* to remove an indictment is no *supersedeas*, unless recognisance be given, pursuant to 5 & 6 Will. & Mar., c. 11.—ANON. (1703), 6 Mod. Rep. 43; 87 E. R. 805.

3221. Effect of forfeiture—On motion to quash

indictment.]—An indictment was removed by *certiorari*, & upon awarding the *certiorari* a recognisance was taken. On motion to quash the indictment:—*Held*: it appearing that the recognisance was forfeited the ct. would not hear the motion.—ANON. (1703), 1 Salk. 380; 91 E. R. 331.

3222. Whether necessary—Removal by defendant.]—R. v. BANKS, No. 3262, *post*.

3223. — When trial removed by superior court—Counties of Cities Act, 1798 (c. 52), s. 12.]—Where an indictment has been originally preferred & found at a sessions for a city, & removed into the Ct. of K. B. by writ of *certiorari*, & then sent down to be tried by a jury of the county at large, it is not necessary that the party removing it should enter into a recognisance under the above Act.—R. v. NOTTINGHAM (1803), 4 East, 208; 1 Smith, K. B. 31; 102 E. R. 810.

3224. — When defendant already in custody.]—Where deft. seeks to remove an indictment by *certiorari* into Q. B., although he may be in custody at the time on civil process, he must still enter into the recognisances specified in 5 & 6 Wm. 4, c. 33, s. 2.—R. v. COLLINGRIDGE (1844), 2 L. T. O. S. 478; 8 J. P. 416; 1 Cox, C. C. 26.

3225. — Removal of presentment by court of sewers.]—If a person against whom a presentment is made by a ct. of sewers, obtain a writ of *certiorari* to remove it into Ct. of Q. B., he must, before the allowance of the writ, enter into the recognisances required by 5 & 6 Will. 4, c. 33.—R. v. BAKER (1859), 28 L. J. Q. B. 377; 33 L. T. O. S. 138; 23 J. P. 326; 7 W. R. 476.

3226. Insufficiency of—May be increased—On motion.]—Where deft. indicted at quarter sessions for a conspiracy had entered into insufficient recognisances to take his trial:—*Held*: this ct., on a removal by *certiorari*, might discharge them on motion, & compel him to enter into better securities.—R. v. HOOPER (1819), 1 Chit. 491.
Annotation:—Distd. R. v. Tregarthan (1833), 2 Nev. & M. K. B. 379.

3227. Where several defendants—Recognisance of one or more sufficient.]—Under 5 & 6 Will. 4, c. 33, as well as by the antecedent practice, a *certiorari* obtained by one of several defts. removes the indictment as to all, & the previous recognisances of all are discharged, though the parties not applying for the *certiorari* do not give any fresh security. Application being made, under such circumstances, for a *precedendo*, unless defts. not suing out the *certiorari* would enter into recognisances, the ct. refused a rule to show cause.—R. v. BOXALL (1836), 4 Ad. & El. 513; 1 Har. & W. 741; 5 L. J. M. C. 78; 111 E. R. 880.

Annotation:—Distd. R. v. Drake (1853), 22 L. J. Q. B. 304.

3228. — — —.]—When one of several defts. has removed an indictment for conspiracy into K. B. by *certiorari*, & he alone has entered into the necessary recognisances, the ct. will not award a writ of *precedendo*, or impose terms as to the other defts. taking short notice of trial, although by the practice of the ct., the trial could not be pressed on against the other defts., & great delay would probably take place.—R. v. NEWTON (1837), 2 Nev. & P. K. B. 121; Will. Woll. & Dav. 497; 6 L. J. M. C. 104; 1 Jur. 772; *sub nom.* R. v. HUNT, 6 Dowl. 5.

3229. — — —.]—R. v. JOHNSON (1847), 11 J. P. Jo. 102.

3230. — — —.]—Several defts. were indicted for a misdemeanour. One was in custody on the charge, the others were out on bail. The ct., on the application of one of defts. who was out on bail, granted a *certiorari* to remove the indictment into this ct., on the terms that if deft. in prison

did not consent appert. was to find bail for him.—*R. v. DRAKE* (1853), 22 L. J. Q. B. 304; 17 J. P. Jo. 326.

3231. ——— **Liability for costs—Of other defendants.]—***R. v. RIDLEY* (1848), 12 J. P. Jo. 425.

3232. ——— **If any one convicted.]—**Where an application was made to remove an indictment by *certiorari* into this ct. by one of several defts., the ct. granted it upon his entering into recognisances to pay the costs, not only if he, but if either of the other defts., were convicted.—*R. v. FOULKES* (1850), 1 L. M. & P. 720; 20 L. J. M. C. 196.

*Annotation:—**Refd. R. v. Jewell* (1857), 7 E. & B. 140.

3233. ——— **Where one of several defts. obtained a certiorari for the removal of an indictment into Q. B., & a procedendo was moved for on the ground that the certiorari improvide emanavit, inasmuch as the other defts. had not joined in the application for the writ, & had not, under 5 & 6 Will. & Mar., c. 11, entered into recognisances to pay the costs of prosecutrix in case of their conviction:—Held: deft. on whose application the *certiorari* was granted, being a person to whose responsibility there appeared no objection, might enter into recognisances to pay costs in case of the conviction of himself or of the other defts., or either of them, & under these circumstances the *procedendo* would not be ordered.—*R. v. PROBERT* (1852), *Dears. C. C.* 30; *sub nom. R. v. HAMP*, 16 J. P. 793, C. C. R.**

3234. ——— **An indictment was removed by certiorari from the Central Criminal Ct. into Q. B. at the instance of one of several defts., on an order requiring him to enter into recognisances to pay the costs of the prosecutor in the event of his being convicted. He entered into the recognisances required by the order, & he & the other defts. entered into recognisances to appear & take their trials. On cause shown against a rule nisi for quashing the writ of certiorari, & for a procedendo, on the ground that all defts. had not entered into recognisances to pay the costs in the event of conviction:—Held: the judge had a discretion as to the terms on which the writ should issue, and that the exercise of his discretion could not be reviewed.—*R. v. WILKES* (1855), 25 L. J. Q. B. 47; 26 L. T. O. S. 90; 20 J. P. 245.**

*Annotation:—**Distd. R. v. Joel* (1857), 21 J. P. Jo. 37.

3235. ——— **A judge may, where a certiorari to remove an indictment into the Q. B. is applied for at the instance of one of two defts., require that the condition of the recognisance shall be that deft. so applying shall be liable for prosecutor's costs, in case either he or the other deft. shall be convicted.—***R. v. JEWELL* (1857), 7 E. & B. 140; 26 L. J. Q. B. 177; 28 L. T. O. S. 231; 3 Jur. N. S. 689; 5 W. R. 202; 119 E. R. 1200; *sub nom. R. v. JOEL*, 21 J. P. Jo. 37.

3236. ——— **—R. v. PACKER** (1877), 41 J. P. Jo. 100.

3237. ——— **—R. v. BRINSMEAD** (1898), 62 J. P. 56.

3238. Whether discharged—Where defendant pleads guilty—By agreement.]—Recognisances of bail taken under 5 & 6 Will. & Mar., c. 11, on the removal of an indictment by *certiorari*, cannot be estreated, deft. having agreed with prosecutor to plead guilty & submit to a nominal fine, without

the knowledge of the bail.—*R. v. ROGERS* (1836), 2 Har. & W. 124.

3239. ——— **Till costs paid—No condition as to costs in recognisance.]—**The sureties of deft. on the removal of an indictment for a misdemeanour by *certiorari* from quarter sessions, are liable to pay prosecutor's costs, although there is no undertaking to that effect in the recognisance, or direct provision to that effect in 5 & 6 Will. & Mar., c. 11, s. 3.—*R. v. BEZANT* (1839), 7 Dowl. 680; 2 Will. Woll. & H. 113.

*Annotations:—**Refd. R. v. Hawdon* (1841), 1 Q. B. 464; *R. v. Hodgson* (1852), *Dears. C. C.* 14.

3240. ——— **—Upon the removal of an indictment for a misdemeanour by defts., the bail are liable to prosecutor upon the recognisance taken under 5 & 6 Will. & Mar., c. 11, s. 3, for the costs of the prosecution, although there is no undertaking to pay the costs in the recognisance.—***R. v. HAWDON* (1841), 1 Q. B. 464; 1 Gal. & Dav. 135; 113 E. R. 1210; *sub nom. R. v. HAGUE*, 10 L. J. M. C. 123; 5 Jur. 1008.

*Annotations:—**Refd. R. v. Sydserff* (1844), 2 Dow. & L. 564; *Jones v. Orchard* (1855), 16 C. B. 614.

3241. ——— **—Where an indictment had been removed by certiorari, & deft. being convicted had become liable to costs, the ct. refused to discharge the recognisances of the bail to the certiorari until the costs were paid, although the recognisances made no mention of costs, but they stayed the proceedings on the recognisances with respect to deft. proper pauperlatem.—***Re THORNTON* (1850), 4 Exch. 820; 14 L. T. O. S. 378; 14 J. P. 97; 154 E. R. 1448; *sub nom. R. v. THORNTON*, 1 L. M. & P. 192; 19 L. J. M. C. 113.

3242. ——— **—Upon removal of an indictment by certiorari from sessions to the Q. B., the sureties in the recognisance become bound as sureties for the payment of the costs in the event of a verdict being found for the Crown, although there are no words to that effect in the conditions to the recognisance; 5 & 6 Will. & Mar., c. 11 being, in effect, incorporated with the recognisance.—***R. v. HODGSON* (1852), 7 Exch. 915; *Dears. C. C.* 14; 21 L. J. M. C. 181; 155 E. R. 1222.

*Annotation:—**Refd. R. v. Hills* (1853), 6 Cox, C. C. 174.

3243. ——— **Common law recognisance.]—***R. v. SIDNEY* (1742), 2 Stra. 1165; 93 E. R. 1103.

*Annotation:—**Refd. R. v. Fonseca* (1756), 1 Burr. 10.

3244. ——— **If defendant does not appear.]—***R. v. CAULDWELL* (1852), 17 Q. B. 504, n.; 16 J. P. Jo. 260; 117 E. R. 1375.

In proceedings by or against corporations.]—*See CORPORATIONS*, Vol. XIII., pp. 410, 413, Nos. 1303, 1330.

D. What Rule granted in First Instance.

See C. O. R., r. 20.

3245. Non-repair of highway—Rule nisi.]—The rule for removing an indictment for non-repairs of a road from an inferior jurisdiction is *nisi* in the first instance.—*R. v. LEEDS (INHABITANTS)* (1836), 5 Dowl. 123.

3246. Misdemeanour—Whether rule absolute.]—The rule for a *certiorari* to remove an indictment for a misdemeanour is absolute in the first instance, but if the indictment is for a felony it is a rule *nisi*.—*R. v. SPENCER* (1838), 8 Dowl. 127; 1 Will. Woll. & H. 418; 2 J. P. 726.

*Annotation:—**Refd. R. v. Bird* (1845), 2 Dow. & L. 939.

3247. ——— **Perjury.]—**On a motion for a

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3246 I. Misdemeanour—Whether rule

*absolute.]—*When a party prosecuting for a misdemeanour applies for a *certiorari* to remove the indictment,

an order absolute will be granted in the first instance.—*R. v. BYRNE* (1843), 5 I. L. R. 473.—*IR.*

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certiorari to remove an indictment for perjury, found at assizes, against deft., into the ct. of K. B. on various grounds:—*Held*: a rule absolute in the first instance would be granted.—*R. v. HARE* (1843), 2 L. T. O. S. 75.

3248. — *In discretion of court.*—The rule for a *certiorari* to remove an indictment for a misdemeanour into the Ct. of Q. B. is not invariably absolute in the first instance. The ct. will, if it think that prosecutor may have cause to show against it, direct that the rule shall be *nisi* only. In felonies it is always *nisi*.—*R. v. BIRD* (1845), 2 Dow. & L. 939; 1 New Pract. Cas. 190; 14 L. J. M. C. 179; 5 L. T. O. S. 39, 58; 9 Jur. 492; 9 J. P. Jo. 245, 263.

3249. Felony—Rule *nisi*.—*R. v. SPENCER*, No. 3248, *ante*.

3250. — *—*—*R. v. BIRD*, No. 3248, *ante*.

3251. — *—*—Upon an application under Central Criminal Ct. Act, 1856 (c. 16), s. 3, to the Ct. of Q. B. by deft., who had been held to bail for a felony, supposed to have been committed beyond the jurisdiction of the Central Criminal Ct., for an order directing that the offence should be tried in such Central Criminal Ct.:—*Held*: a rule *nisi* only in the first instance would be granted for the making of such order, & notice of the rule should be served on prosecutor, & also on the committing magistrates.—*R. v. WATERS* (1865), 6 New Rep. 226; 13 W. R. 807.

E. Issue and Service of Writ.

3252. To whom directed—Removal from Cinque Ports.—*TYNDAL'S CASE*, No. 2450, *ante*.

3253. Must be signed by judge.—In a case of *certiorari* to remove indictments both writ & fiat must be signed by a judge.—*R. v. WHITE* (1705), 1 Salk. 150; Holt, K. B. 132; 91 E. R. 139.

Annotations:—Reld. R. v. St. Mary, Whitechapel (1843), 12 L. J. M. C. 85. *Mentd. R. v. Lashmere* (1723), 11 Mod. Rep. 380.

3254. On whom served—Prosecutor & committing magistrates.—*R. v. WATERS*, No. 3251, *ante*.

3255. When served—Not after jury sworn.—*R. v. NORTH* (1697), 1 Salk. 144; 91 E. R. 133.

Annotations:—Mentd. Garland v. Barton (1737), Andr. 27; *Woodcroft v. Kynaston* (1743), 9 Mod. Rep. 305.

F. Proceedings after Removal.

3256. Return—Necessity for.—A *certiorari* to justices of the peace must be returned by them.—*ANON.* (1662), 1 Sid. 70; 82 E. R. 975.

3257. — Need not be signed by justices.—*ANON.*, No. 3220, *ante*.

3258. — Caption must show jurisdiction of inferior court.—Upon a return of a *certiorari* to remove an indictment, it is not necessary that it should appear by the caption, by what authority the ct. was held, but it must appear that the inferior ct. has jurisdiction.—*R. v. HADDOCK* (1737), Andr. 137; 95 E. R. 333.

Annotations:—Reld. R. v. Tyrrell & O'Connell (1843), 2 L. T. O. S. 175. *Mentd. Rouse v. Bardin* (1790), 1 Hy. Bl. 351.

3259. — Amendment of caption.—Deft. was indicted for perjury at the sessions of oyer & terminer for the county of M. in Feb. 1783. The indictment was removed into the K. B. by deft. in Easter term following by *certiorari* directed to the justices of oyer & terminer. It was returned with a caption not properly applicable, either to

the ct. of oyer & terminer, or to the sessions of the peace:—*Held*: a caption might be amended after the term, & made agreeable to the truth of the case.—*R. v. ATKINSON* (1784), 1 Wms. Saund. 249, n.; 4 East, 175, n.; 85 E. R. 293; *affd. sub nom. ATKINSON v. R.* (1785), 3 Bro. Parl. 517, H. L.

Annotations:—Consd. R. v. O'Connell (1844), 5 State Tr. N. S. 1. *Reld. R. v. Carille* (1831), 3 State Tr. N. S. 459; *R. v. O'Brien* (1849), 7 State Tr. N. S. 1. *Mentd. R. v. Holt* (1793), 5 Term Rep. 436; *R. v. Crossley* (1797), 7 Term Rep. 315; *R. v. Teal* (1809), 11 East, 807; *R. v. Gregory* (1847), 16 L. J. Q. B. 281.

3260. Appearance—Before motion in arrest of judgment.—Upon the moving of indictments to the K. B. by *certiorari*, we will not hear a motion in arrest of judgment until deft. has appeared (HOLT, C.J.).—*ANON.* (1702), 7 Mod. Rep. 39; 87 E. R. 1079.

3261. — Must be in same term as return.—Deft. who removes an indictment by *certiorari* must appear during the term in which the writ is returned.—*ANON.* (1704), 6 Mod. Rep. 220; 87 E. R. 972.

—*See C. O. R.*, r. 72.

Pleading.—*See C. O. R.*, rr. 121, 127.

3262. Trial—At assizes next after removal—Whether defendant entitled to.—(1) If prosecutor removes an indictment from sessions into the K. B. deft. cannot carry it down to trial the assizes next after the removal.

(2) If an indictment be removed by prosecutor into the K. B. by *certiorari* out of London or Middlesex, deft. must enter into a recognisance to try it the same term, or at the sittings after, but if removed out of any other county he is without day, & if he do not appear process shall issue till he be outlawed, but if deft. remove an indictment, he must enter into a recognisance pursuant to 5 Will. & Mary, c. 2.—*R. v. BANKS* (1704), 2 Ld. Raym. 1082; 6 Mod. Rep. 245; 11 Mod. Rep. 33; 2 Salk. 652; 92 E. R. 217.

Annotations:—As to 1 Reld. R. v. Macleod (1802), 2 East, 202; *Oakeley v. Ooddeen* (1862), 11 C. B. N. S. 805.

3263. — Entry by prosecutor—Case removed by defendant.—Where an indictment for a misdemeanour has been removed by *certiorari*, & defts. have entered into recognisances to appear & try the indictment, prosecutor has a right to enter it for trial, & whichever party enters it for trial has a right to try it in its turn, as in that respect an indictment so removed has all the incidents of a civil action.—*R. v. DUFFIELD* (1851), 5 Cox, C. C. 286.

—*See C. O. R.*, rr. 137–146.

3264. Jurisdiction of court.—Amendment of venue.—*R. v. STOWELL* (1843), 5 Q. B. 44; Dav. & Mer. 189; 12 L. J. M. C. 111; 1 L. T. O. S. 337; 7 J. P. 752; 7 Jur. 742; 114 E. R. 1163.

Annotations:—Distd. R. v. Albert (1843), Dav. & Mer. 89; *R. v. Gregory* (1845), 14 L. J. M. C. 82. *Reld. R. v. Meany* (1867), 15 W. R. 1082. *Mentd. R. v. Hunt* (1847), 10 Q. B. 925.

3265. — *—*—*R. v. ALBERT* (1843), 5 Q. B. 37; Dav. & Mer. 89; 12 L. J. M. C. 117; 1 L. T. O. S. 312; 7 Jur. 741; 114 E. R. 1161.

Annotations:—Reld. R. v. Johnson (1843), 1 L. T. O. S. 228; *R. v. Stowell* (1843), 5 Q. B. 44; *R. v. Hunt* (1847), 10 Q. B. 925.

3266. — By consent.—After an indictment has been preferred at the Central Criminal Ct., & removed by *certiorari* into the Ct. of K. B. & set down for trial at the sittings, having the venue such as is prescribed by Central Criminal Ct. Act, 1834 (c. 36), s. 3, & no other, the ct. will,

by consent, order an amendment to be made in the venue, both in the margin & body of such indictment, in order to admit of its being tried by a London or Middlesex jury.—*R. v. ASHBURTON* (Lord) (1843), 5 Q. B. 48; 13 L. J. M. C. 40; 2 L. T. O. S. 167; 8 Jur. 143; 114 E. R. 1165.

Annotations.—*Reid. R. v. Hunt* (1847), 9 L. T. O. S. 495. *Mentd. O'Connell v. R.* (1844), 11 Cl. & Fin. 155.

3267. —————.]—*R. v. MASON* (1852), 16 J. P. Jo. 294.

3268. Right of defendant to plead in form *pauperis*.—Cause removed by defendant.—Without cause shown.]—Deft. removing an indictment by *certiorari* without good cause, cannot be admitted in form *pauperis*.—*R. v. REYNALDS* (1760), 1 Wm. Bl. 230; 96 E. R. 126.

Annotation.—*Consd. R. v. Nicholson* (1840), 8 Dowl. 489.

3269. — On affidavit.]—In an indictment removed by *certiorari* into K. B. a deft. will be allowed to plead in form *pauperis* on making the usual affidavit.—*R. v. PAGE* (1832), 1 Dowl. 507.

3270. — Defendant in custody for debt.]—Where deft. removes an indictment into the Bail Ct. by *certiorari*, being at the period when the indictment is removed a prisoner in a debtor's prison, the ct. will, under the circumstances, & on the usual affidavit, allow him to sue in form *pauperis*.—*R. v. NICHOLSON* (1840), 8 Dowl. 489; *sub nom. Ex p. NICHOLSON*, 4 Jur. 506.

G. The Writ of Procedendo.

3271. Jurisdiction of judge in chambers to issue writ.]—*R. v. SCAIFE*, No. 3279, *post*.

3272. Whether issued after return filed.]—*R. v. UPTON* (1663), 1 Sid. 108; 82 E. R. 1000.

Annotation.—*Reid. Shergold v. Bostwick* (1728), 1 Barn. K. B. 142.

3273. Grounds for issue—General rule.]—*R. v. WILKES*, No. 3234, *ante*.

3274. — *Certiorari* issued on false ground.]—*ANON.* (1697), 1 Salk. 144; 91 E. R. 133.

Annotation.—*Reid. Garland v. Barton* (1737), Andr. 27.

3275. — *Certiorari* issued after confession of offence.]—A *procedendo* will be directed if the *certiorari* issues after a confession of the offence below.—*R. v. GWYNNE* (1759), 2 Burr. 749; 2 Keny. 440; 97 E. R. 547.

3276. — *Certiorari* issued to obtain process of outlawry—Defendant surrendering.]—If an indictment for felony has been removed here from an inferior ct. in order to issue process of outlawry upon it, & the party accused come in, this ct. will award *procedendo* to carry the record back.—*R. v. PERRY* (1794), 5 Term Rep. 478; 101 E. R. 269.

3277. — *Certiorari* produced after trial adjourned.]—In a case which, at assizes, had been put off for a day, & a *certiorari* was afterwards produced, the ct. would not grant a *procedendo*.—*R. v. RIDGEWAY* (1822), 1 L. J. O. S. K. B. 53.

3278. — Order for bail not complied with.]—A case being moved from sessions by *certiorari*, granted by the judge upon an order providing that defts. should put in bail, a rule *nisi* was granted for a *procedendo* to take it back to sessions, only one of four defts. having put in bail.—*R. v. COTTON* (1838), 2 J. P. 263.

3279. — Notice of trial not given.]—A judge of either of the superior cts. sitting at chambers has power under 1 & 2 Vict. c. 45, s. 1, to issue a *procedendo*.

Semble: where defts. neglect to take down the record & give due notice of trial a *procedendo* will be granted.—*R. v. SCAIFE* (1852), 18 Q. B. 773; 2 Den. 513; 21 L. J. M. C. 221; 19 L. T. O. S. 201; 16 J. P. 456; 17 Jur. 232; 118 E. R. 292.

Annotation.—*Reid. R. v. Wilkes* (1855), 20 J. P. 245.

3280. — *Certiorari* issued without jurisdiction.]—*MYERS v. BRIGGS* (1858), 22 J. P. Jo. 96.

H. Effect of Removal.

3281. General rule.—What proceedings removed.]—The effect of a *certiorari* to remove an indictment from sessions is to remove all proceedings of the nature described therein which have taken place between the teste & return, although the proceedings originated after the teste.—*R. v. BATTAMS* (1801), 1 East, 298; 102 E. R. 116.

Annotations.—*Reid. Mungeam v. Wheatley* (1851), 16 L. T. O. S. 441. *Mentd. R. v. Amendt*, [1015] 2 K. B. 276.

3282. Record cannot be withdrawn.—Without leave of Crown.]—The prosecution cannot withdraw the record of an indictment that has been removed by *certiorari*, nor enter a *nolle prosequi* without leave of the A.-G.—*R. v. COLLING* (1847), 9 L. T. O. S. 180; 2 Cox, C. C. 184.

3283. Where several defendants.—Whether applicable jointly or severally.]—A *certiorari* to remove all proceedings against several persons will only remove proceedings against all of them jointly.—*R. v. BROWN* (1700), 1 Ld. Raym. 609; 1 Salk. 146; 3 Salk. 78; 91 E. R. 1307; *sub nom. R. v. FOSSEBROOK*, cited in 2 Ld. Raym. 1200.

Annotations.—*Reid. R. v. Baines* (1705), 2 Ld. Raym. 1199; *Anon.* (1718), 1 Stra. 116.

3284. — Whether applicable to one party.]—A *certiorari* to remove all proceedings against two persons will not remove any proceedings against one of them alone.—*R. v. BAINES* (1705), 2 Ld. Raym. 1199; 92 E. R. 292; *sub nom. R. v. BARNES*, 1 Salk. 151; *subsequent proceedings* (1706), 2 Ld. Raym. 1265.

Annotations.—*Reid. Anon.* (1718), 1 Stra. 116. *Mentd. Garland v. Barton* (1737), Andr. 27.

3285. — Removal by one—Removes as to all.]—Where there is an indictment against two, & one of them removes it by *certiorari*, it is removed *quoad* both.—*R. v. WORSENHOLM & WEEKS* (1701), 12 Mod. Rep. 601; 88 E. R. 1546.

3286. — —————.]—*R. v. BOXALL*, No. 3227, *ante*.

I. Appeals.

3287. No appeal lies—Refusal to remove to Central Criminal Court—Judicature Act, 1873 (c. 66), s. 47.]—The decision of the Q. B. Div. on an application for a writ of *certiorari* under Central Criminal Ct. Act, 1856 (c. 16), s. 3, to remove an indictment into the Central Criminal Ct. for trial is a "judgment of the High Ct. in a criminal cause or matter" within sect. 47 of the Act of 1873, & the Ct. of Appeal has no jurisdiction to entertain an appeal from such decision.—*R. v. RUDGE* (1886), 16 Q. B. D. 459; 55 L. J. M. C. 112; 53 L. T. 851; 50 J. P. 755; 34 W. R. 207; 2 T. L. R. 243, C. A.

Annotation.—*Reid. Burnett v. Berry* (1896), 60 J. P. 550.

3288. Discretion of judge in chambers—Not interfered with on same facts.]—*R. v. ELGIE* (1844), 2 L. T. O. S. 369.

J. Costs.

(a) In General.

See COSTS IN CRIMINAL CASES ACT, 1908 (c. 15).

3289. Of prosecutor—Prior to removal.]—Costs taxed upon a *certiorari* are to be only the costs in the K. B.—*R. v. SUMMERS* (1702), 1 Salk. 55; 3 Salk. 104; 91 E. R. 54.

3290. — Delay in notice of writ.]—The Ct. of K. B. cannot grant costs to prosecutor in a ct. below, although those costs have been incurred in consequence of deft. having sued out & improperly kept, without giving notice of it, a

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certiorari which has been afterwards quashed.—*R. v. HIGGINS* (1836), 5 Ad. & El. 554; 5 Dowl. 375; 2 Har. & W. 397; 1 Nev. & P. K. B. 50; 6 L. J. M. C. 9; 111 E. R. 1275.

3291. — **Defence frivolous or vexatious—Highway Act, 1835 (c. 50), s. 98.**—Where an indictment was preferred at quarter sessions & removed by *certiorari* into Q. B., that ct. had power under sect. 98 of the above Act, to award to prosecutor costs incurred previous to the removal of the indictment, if the defence has been frivolous or vexatious, in the opinion of the judge trying the cause.—*R. v. PRESTON* (INHABITANTS) (1839), 7 Dowl. 593.

Annotation:—*Refd. R. v. Pembridge* (1842), 3 Q. B. 901.

3292. — **—**—*R. v. SURREY JJ.* (1856), 26 L. T. O. S. 248; 20 J. P. Jo. 101.

3293. — **Occasioned by removal—At instance of defendant.**—*R. v. HAWDON*, No. 3240, *ante*.

3294. — **Share of fine to be taken into account.**—The costs of prosecutor are to be deducted out of his share of a fine, when the proceedings have been removed by *certiorari* under the usual recognisance.—*R. v. OSBORNE* (1767), 4 Burr. 2125; 98 E. R. 108.

3295. — **Where defendant demurs to indictment.**—Where an indictment has been removed by *certiorari*, & deft. moves to withdraw his plea of not guilty, & to demur, the costs follow the judgment, as upon a conviction, & the motion will be granted without terms as to costs.—*R. v. BINKES* (1805), 2 Smith, K. B. 619.

3296. — **Judgment arrested after verdict.**—5 & 6 Will. & Mar., c. 11, directing by sect. 2 that no *certiorari* shall be granted on the part of deft. to remove an indictment for a misdemeanour from sessions before he shall enter into a recognisance in £20 to try at the next assizes, etc., & by sect. 3 that if deft. prosecuting such *certiorari* be convicted, the Ct. of K. B. shall give reasonable costs to prosecutor, & that the recognisance shall not be discharged till the costs taxed shall be paid, attaches only upon deft. convicted by judgment, & therefore if, after a verdict of guilty, the judgment be arrested, no costs can be taxed for prosecutor.—*R. v. TURNER* (1812), 15 East, 570; 104 E. R. 959.

Annotation:—*Mentd. R. v. O'Connell* (1844), 5 State Tr. N. S. 1.

3297. — **Defendant not consenting to removal—Appearing & pleading to indictment.**—If an indictment against several defts. is removed by *certiorari* without the consent of one, he cannot be compelled to pay the costs of the trial, although he may have appeared & pleaded to the indictment & been tried on it.—*R. v. HASSELL* (1836), 5 Dowl. 531; 2 Har. & W. 321.

3298. — **Must be awarded by judge at trial.**—*Semble:* the judge who tries an indictment for felony, removed into the Ct. of Q. B. by *certiorari* has power to award prosecutor his costs, but this must be done by the judge who tried the case, & not by the ct.—*R. v. MAUDE* (1844), 3 L. T. O. S. 75; 8 J. P. Jo. 297.

3299. — **Money for expenses borrowed by prosecutor—Prosecutor receiving expenses as witness.**—Prosecutor of an indictment, which has been removed by *certiorari* at the instance of deft.,

is entitled to his costs under 5 & 6 Will. & Mar., c. 11, s. 3, if deft. be convicted, although the whole of the money necessary for carrying on the expenses of the prosecution has been advanced by other parties on his promise to repay them. The fact that prosecutors of an indictment which has been removed by *certiorari* have been paid their expenses as witnesses, or for other reason relating to the trial, though a proper matter to be considered by the master on taxation, is not a reason why a rule for referring it to the master to tax the costs of prosecutor to be paid by defts. under the Act, should be discharged, nor is the fact that an indictment has been removed by *certiorari*, at the instance of one only of several defts., a reason for discharging such rule.—*R. v. DOBSON* (1845), 9 Q. B. 302, n.; 1 New Mag. Cas. 434; 15 L. J. Q. B. 97; 6 L. T. O. S. 168; 9 J. P. 776; 10 Jur. 283; 1 Cox, C. C. 251; 115 E. R. 1289.

3300. — **Defendant found not guilty—Larceny Act, 1861 (c. 96), s. 121.**—*R. v. GURNEY* (1869), *Finlason's Report* 240; 11 Cox, C. C. 414, 470.

Annotations:—*Mentd. Peek v. Gurney* (1871), L. R. 13 Eq. 79; *R. v. Parker & Bulteel* (1916), 25 Cox, C. C. 145.

3301. — **Of defendant—Prosecutor withdrawing record—After notice of trial.**—Upon an indictment for perjury removed into the K. B. by *certiorari*, if prosecutor give notice of trial to deft., & withdraw his record without countermanding his notice in time, he shall pay costs to deft.—*R. v. BARTRUM* (1807), 8 East, 269; 103 E. R. 344.

Annotations:—*Consd. R. v. Pasman* (1834), 2 Dowl. 529. *Refd. R. v. Higgins* (1836), 5 Ad. & El. 554.

3302. — **Prior to removal—Where no irregularity in proceedings.**—*R. v. PASSMAN*, No. 3102, *ante*.

3303. — **Prosecutor bound over to pay costs on acquittal—Defendant acquitted on some counts only.**—On removing by *certiorari* an indictment containing seven counts into the High Ct., prosecutors bound themselves to pay deft.'s costs if she were acquitted on the indictment. Deft. was acquitted on five out of the seven counts:—*Held:* this was not acquitted within the meaning of the recognisance, & deft. could not claim her costs.—*R. v. BAYARD*, [1892] 2 Q. B. 181; 67 L. T. 313; 56 J. P. 650; 40 W. R. 525; 36 Sol. Jo. 558; 17 Cox, C. C. 572, D. C.

Where several defendants.—*See* Nos. 3227–3237, *ante*.

Non-repair or obstruction of highways, bridges or rivers.—*See* Costs in Criminal Cases Act, 1908 (c. 15), s. 9 (3).

Effect of Judicature Acts.—*See* Nos. 3737–3743, *post*.

(b) *Under 5 & 6 Will. & Mar., c. 11.*

See, now, Costs in Criminal Cases Act, 1908 (c. 15).

3304. — **Effect of death of party.**—Under sect. 3 of the above Act which regulates the removal of indictments from the sessions by *certiorari*, the representatives of prosecutor are entitled to the costs taxed during his life, though no personal demand were ever made by him. For though it take away the remedy by attachment, it does not affect the debt. When costs are taxed, they

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a).

3294 i. *Of prosecutor—Share of fine to be taken into account.*—Where the indictment was removed by prosecutors:—*Held:* deft. was not liable to costs;

but ct. ordered one-third of the fine imposed should go to prosecutors.—*R. v. JACKSON* (1876), 40 U. C. R. 290.—CAN.

d. *Of defendant—Indictment removed by prosecutor—Defendant ac-*

quitted.—An indictment was removed by *certiorari*, at the instance of the private prosecutor, & deft. was acquitted:—*Held:* there was no power to impose payment of costs on such prosecutor.—*R. v. HART* (1880), 45 U. C. R. 1.—CAN.

become a debt.—*R. v. CHAMBERLAYNE* (1786), 1 Term Rep. 103; 99 E. R. 997.

Annotations :—*Reid*. *R. v. Besant* (1839), 7 Dowl. 680. *Mentl*. *Emerson v. Lashley* (1793), 2 Hy. Bl. 248.

3305. —[—]—If deft. remove an indictment to K. B. by *certiorari*, giving the usual recognisance under the above Act, & be found guilty, & die before he can be brought up for judgment, his bail are liable to pay the costs.—*R. v. FINMORE* (1799), 8 Term Rep. 409; 101 E. R. 1460.

Annotations :—*Consd*. *R. v. Turner* (1824), 3 B. & C. 160. *Reid*. *R. v. Hodgson* (1852), Dears. C. C. 14.

3306. —[—]—Where deft. had removed an indictment from sessions into K. B. by *certiorari*, & was convicted, but died before he could be brought up for judgment :—*Held* : his bail were liable to pay the taxed costs of the prosecution, under sect. 3 of the above Act.—*R. v. TURNER* (1824), 3 B. & C. 160; 4 Dow. & Ry. K. B. 816; 2 L. J. O. S. K. B. 222; 107 E. R. 694.

Annotation :—*Mentl*. *Jones v. Orchard* (1855), 16 C. B. 614.

3307. What included in prosecutor's costs—Costs of removing defendant to gaol.—The costs of conveying deft. to gaol in execution of his sentence, are reasonable costs, within sect. 3 of the above Act, to be allowed to prosecutor where the indictment has been removed by *certiorari*.—*R. v. GILBIE* (1816), 5 M. & S. 520; 105 E. R. 1141.

3308. — Indictment on two counts—Conviction on one count only.—Under sect. 3 of the above Act if deft. be indicted on two different counts, & remove the indictment by *certiorari*, & be convicted on one count & acquitted on the other, he is liable only for the costs incident to the first.—*R. v. HAWDON* (1839), 11 Ad. & El. 143; 3 Per. & Dav. 44; 113 E. R. 369.

3309. Whether prosecutor entitled to costs—Nominal prosecutor—No expense incurred—Costs defrayed by subscription.—Where the expenses of an indictment for a misdemeanour, removed by *certiorari* from quarter sessions, are defrayed by subscription, & the nominal prosecutors incur no expense, they are not entitled to costs, as prosecutors within sect. 3 of the above Act.

Qu. : whether the near relations of a person whose body has been disinterred for the purpose of dissection, are parties grieved within the Act.—*R. v. COOK* (1828), 1 Man. & Ry. K. B. 526; 1 Man. & Ry. M. C. 191; 6 L. J. O. S. M. C. 52.

Annotations :—*Appl*. *R. v. Dewhurst* (1833), 2 L. J. M. C. 92. *Reid*. *R. v. Williams* (1844), 6 Q. B. 273; *R. v. Dobson* (1846), 9 Q. B. 302; *R. v. Wilson* (1853), Dears. C. C. 79.

3310. —[—]—A public body at its own expense preferred an indictment for a libel upon A. one of its officers, in the name of A. as prosecutor. Deft. removed the indictment by *certiorari*, & was convicted :—*Held* : no costs could be awarded under sect. 3 of the above Act, on the ground that the party applying must be the actual, & not the mere nominal, prosecutor, & also the party grieved or injured.—*R. v. DEWHURST* (1833), 5 B. & Ad. 405; 2 Nev. & M. K. B. 253; 2 L. J. M. C. 92; 110 E. R. 840.

See, also, Nos. 3296, 3299, *ante*.

3311. Who are "parties grieved."—*R. v. TAUNTON ST. MARY* (INHABITANTS), No. 2839, *ante*.

3312. —[—]—*R. v. COOK*, No. 3309, *ante*.

3313. —[—]—Rated inhabitants of a parish, who were prevented by rioters from entering the vestry room to attend a meeting called for the purpose of imposing a church rate, & who afterwards prosecuted the offenders, are parties grieved within the meaning of sect. 3 of the above Act, & therefore, entitled to costs on conviction of defts. after removal of the case by *certiorari*.—

R. v. THOMKINS (1831), 2 B. & Ad. 287; 9 L. J. O. S. M. C. 81; 109 E. R. 1150.

3314. —[—]—*R. v. DEWHURST*, No. 3310, *ante*.

3315. —[—]—An indictment for a libel on a political dinner, alleged to have a tendency to produce a riot, was, at the instance of defts., removed by *certiorari* :—*Held* : the person injured at the riot which took place at that dinner was not a person grieved within sect. 3 of the above Act, & therefore, although defts. were convicted on the indictment, not entitled to costs.—*R. v. CALDECOTT* (1842), 1 Dowl. N. S. 556; 11 L. J. M. C. 61; 6 Jur. 344.

Annotation :—*Reid*. *R. v. Dobson* (1845), 15 L. J. Q. B. 97.

3316. —[—]—*R. v. MONK'S KIRBY* (INHABITANTS) (1852), 19 L. T. O. S. 109; 16 J. P. Jo. 324.

3317. — Contribution to expenses.—Where an indictment has been removed by *certiorari* & a conviction obtained, the person who, being a party grieved, retained & is liable to the attorney for the prosecution, is entitled, under sect. 3 of the above Act, to the costs of such prosecution, though other aggrieved parties, after the attorney was retained & the indictment removed, agreed to contribute part of the costs, & they are not joined in the application.—*R. v. WILLIAMS* (1844), 6 Q. B. 273; 15 L. J. Q. B. 98, n.; 3 L. T. O. S. 220; 8 Jur. 559; 1 Cox, C. C. 77; 8 J. P. Jo. 355; 115 E. R. 105.

Annotations :—*Reid*. *R. v. Fox* (1860), 2 L. T. 281. *Mentl*. *R. v. Dobson* (1846), 9 Q. B. 302.

3318. —[—]—Where an indictment is prosecuted by persons having some interest in the subject-matter, & is removed by *certiorari*, prosecutors, on conviction, are entitled to costs under sect. 3 of the above Act as parties grieved, though the expenses of prosecution have been paid by other persons.—*R. v. DOBSON* (1846), 9 Q. B. 302; 15 L. J. Q. B. 376; 7 L. T. O. S. 256; 10 Jur. 905; 2 Cox, C. C. 42; 10 J. P. Jo. 387; 115 E. R. 1289.

3319. — Where nominal prosecutor.—Where an indictment is removed from quarter sessions into the ct. by *certiorari*, at deft.'s instance, & deft. is convicted, the party employing the attorney to conduct the prosecution, & at whose charge the proceedings are carried on, is "prosecutor" of the indictment within the meaning of sect. 3 of the above Act, & if also a "party grieved" by the offence, is entitled to costs, although another party may have entered into the recognisances, & been bound over to prosecute the charge.

Whether the party claiming costs under the sect. is, in point of fact, "prosecutor" or not, is a matter which the ct. will inquire into upon affidavit.—*R. v. BISHOP* (1849), 6 Dow. & L. 499; 12 L. T. O. S. 407; 13 J. P. 122; 13 Jur. 538.

3320. — Persons acting in official capacity.—An indictment for not paying costs to surveyors of highways, pursuant to an order of sessions, was removed into this ct. by *certiorari* :—*Held* : sect. 3 of the above Act applied to the case, & the surveyors, being the prosecutors & parties grieved by the nonpayment, were entitled to their costs.—*R. v. THORNTON* (1849), 12 L. T. O. S. 424; 13 J. P. 87; *subsequent proceedings, sub nom. Re THORNTON* (1850), 4 Exch. 820.

3321. — Parties injured by conduct of defendants.—An indictment for a conspiracy to prevent A., a workman, from accepting work with B. & also in some counts from obtaining work generally, was removed by *certiorari* by defts. The party prosecuting the indictment was C. another master, for whom A. had worked, & it appeared that the reason of the combination against him was his having worked for C. :—*Held* :

Sect. 9.—Procedure: Sub-sect. 2, J. (b), (c) & (d); sub-sect. 3, A. (a).]

although no count in the indictment charged an intention to injure C., he was nevertheless a party "grieved or injured" within the meaning of sect. 3 of the above Act, & therefore, upon a conviction of defts., entitled to his costs.—*R. v. HEWITT* (1848), 17 L. T. O. S. 105.

3322. — Prosecutors interested as executors.]—Where deft. was convicted on an indictment for perjury in an affidavit, removed by himself by *certiorari* into the Ct. of Q. B.:—*Held*: prosecutors were entitled to costs under the above Act, as "parties grieved or injured," although the false swearing failed of its effect & prosecutors were only interested as exors. in the suit in which the false affidavit was made.—*R. v. MAJOR* (1852), *Dears. C. C.* 13; 21 L. J. M. C. 221; 19 L. T. O. S. 171.

3323. — Person liable for expenses.]—The Lord Mayor of London having committed deft. for trial at the Central Criminal Ct. upon a charge of misdemeanour, directed the city solr. to conduct the prosecution, the expenses of which were defrayed out of the city funds. Deft. removed the indictment into the Ct. of Q. B. by *certiorari*, & was convicted:—*Held*: the Lord Mayor, not being personally liable for the expenses of the prosecution, was not entitled, as prosecutor, to recover the costs from deft. under sect. 3 of the above Act.

In order to bring the case within the statute, there must be a prosecutor personally liable for the expenses.—*R. v. WILSON* (1853), 1 E. & B. 597; *Dears. C. C.* 79; 22 L. J. M. C. 53; 20 L. T. O. S. 235; 17 Jur. 460; 1 W. R. 150; 6 Cox, C. C. 176; 17 J. P. Jo. 101; 118 E. R. 561.

Annotation:—Ridd. R. v. Hills (1853), 2 E. & B. 176.

3324. ——A prosecution was directed to be instituted by the town council of a municipal borough, & two members of the council instructed the attorney who conducted it & rendered themselves liable for the costs to him. Deft. removed the indictment by *certiorari*, entering into the usual recognisance:—*Held*: the two councillors were entitled, by the above Act, to costs from deft. on conviction.

T. & S. were persons aggrieved within the meaning of the statute. They authorised their names to be used & made themselves responsible for the costs (*COCKBURN, J.*).—*R. v. FOX* (1860), 2 L. T. 281; 24 J. P. 470.

—Application for writ of *certiorari* to quash.]—See Sub-sect. 3, A. (a), *post*.

3325. "Civil officers concerned to prosecute" — Metropolitan Police Commissioners.]—If the Metropolitan Police Comrs., appointed under Metropolitan Police Act, 1829 (c. 44), s. 1, direct an indictment for assaulting one of the police constables in the execution of his duty, & deft. removes such indictment by *certiorari* & is convicted, the comrs. are entitled to costs under sect. 3 of the above Act as justices of the peace & civil officers whom it concerned to prosecute.—*R. v. WALDEGRAVE (EARL)* (1841), 2 Q. B. 341; 1 Gal. & Dav. 615; 11 L. J. M. C. 19; 6 J. P. 3; 6 Jur. 502; 114 E. R. 134.

Annotations:—Consd. R. v. — (1850), 15 Q. B. 1060; *R. v. Kenealey* (1850), 16 L. T. O. S. 192. *Mentd. R. v. Dobson* (1846), 10 Jur. 905.

3326. — Poor law guardians.]—A child was found in the streets with marks of violent ill-

treatment upon it, & it was taken to the work-house of a union & the guardians preferred an indictment against the father for a misdemeanour. Deft., having removed by *certiorari* & been on the trial found guilty:—*Held*: the guardians were, under sect. 3 of the above Act, entitled to their costs as civil officers prosecuting upon account of a fact committed that concerned them as officers to prosecute.

In order to entitle a prosecutor to costs under the sect. it is sufficient to show that he prosecuted in pursuance of some moral obligation & was not a mere volunteer.—*R. v. —* (1850), 15 Q. B. 1060; 20 L. J. M. C. 53; 15 Jur. 55; 117 E. R. 761; *sub nom. R. v. KENEALEY*, 16 L. T. O. S. 192; 15 J. P. 114; 4 Cox, C. C. 345.

Annotation:—Ridd. R. v. Wilson (1853), *Dears. C. C.* 79.

Effect of Judicature Acts.]—See No. 2421, *ante*, Nos. 3584, 3738–3741, *post*.

(c) *Under Criminal Law Act, 1826 (c. 64).*

See Costs in Criminal Cases Act, 1908 (c. 15).

3327. Whether prosecutor entitled to.]—Upon an indictment for a riot removed by prosecutor by *certiorari* into the Ct. of K. B. & tried at *Nisi Prius*, prosecutor is not entitled to costs under the above Act.—*R. v. JOHNSON* (1827), 1 Mood. C. C. 173, C. C. R.

3328. ——Where prosecutor of an indictment for a misdemeanour found at sessions removes it into the K. B. by *certiorari* he is not entitled to costs under sect. 23 of the above Act.—*R. v. RICHARDS* (1828), 8 B. & C. 420; 2 Man. & Ry. K. B. 405; 1 Man. & Ry. M. C. 443; 6 L. J. O. S. M. C. 104; 108 E. R. 1098.

Annotations:—Ridd. R. v. Surrey JJ. (1856), 26 L. T. O. S. 248. *Mentd. R. v. Jeyes* (1835), 5 Nev. & M. K. B. 101; *R. v. Pembridge* (1842), 3 Q. B. 901.

3329. ——Where an indictment for felony is removed by *certiorari*, & tried at *Nisi Prius*, neither the judge at *Nisi Prius* nor the Ct. of K. B. has authority to award costs to prosecutor under sect. 22 of the above Act whether the indictment be removed by prosecutor or by prisoner.—*R. v. EXETER CITY (TREASURER)* (1829), 5 Man. & Ry. K. B. 167; 2 Man. & Ry. M. C. 606; 8 L. J. O.

Effect of Judicature Acts.]—See No. 2421, *ante*, Nos. 3584, 3738–3741, *post*.

(d) *Under Criminal Procedure Act, 1853 (c. 30).*

See, now, Costs in Criminal Cases Act, 1908 (c. 15).

3330. Of defendant—Recognisance of prosecution not conditioned to pay costs on acquittal.]—*R. v. EAST STROKE (INHABITANTS)* (1865), 6 B. & S. 536; 34 L. J. M. C. 190; 29 J. P. 596; 11 N. S. 809; 13 W. R. 737; 122 E. R.

3331. Of prosecutor — When not "party grieved."]—*R. v. OASTLER* (1874), L. R. 9 Q. B. 132; 43 L. J. Q. B. 42; 29 L. T. 830; 38 J. P. 391; 22 W. R. 490; 12 Cox, C. C. 578.

Effect of Judicature Acts.]—See No. 2421, *ante*, Nos. 3584, 3738–3741, *post*.

SUB-SECT. 3.—CERTIORARI TO QUASH.

A. Application for the Writ.

(a) In General.

3332. Who may apply—To remove erroneous order—Not person in whose favour order made.]—A *certiorari* will not be granted to remove an

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..... made—*Single judge.*—The full ct. will not hear a motion for a rule *not* to quash a conviction; the motion should be made to a single judge.—*R. v. TANGHE* (1904), 10 B. C. R. 297.—CAN.

erroneous order of sessions, at the instance of the party in whose favour the error was made.—*R. v. DENBIGHSHIRE JJ.* (1853), 17 J. P. 312; 1 C. L. R. 239.

3333. — *Presentment for repair of road—Party other than presenting justice*—13 Geo. 3, c. 78, s. 24.]—It is no objection to a *certiorari* to remove a presentment of a road made by a justice of the peace under sect. 24 of the above Act, that it is prosecuted by another than the justice presenting, if it is by his consent.—*R. v. PENDERDYN (INHABITANTS)* (1788), 2 Term Rep. 260; 100 E. R. 142.

3334. — *Removal of order of justices—Party giving notice to justices*—13 Geo. 2, c. 18, s. 5.]—Sect. 5 of the above Act requires that the party suing forth any *certiorari* shall have given notice thereof to the justices whose order is in question. A *certiorari* cannot be issued at the instance of any but the party who gave such notice, although he avowedly drops the proceeding, & although it is too late to give a fresh notice.—*R. v. KENT JJ.* (1832), 3 B. & Ad. 250; 1 L. J. M. C. 29; 110 E. R. 94.

3335. — *Second order made after first order reversed—Party complaining must apply.*—*R. v. BLOXAM*, No. 3346, *post*.

3336. — *“Person aggrieved.”*—*R. v. SURREY JJ.*, No. 2822, *ante*.

3337. — —.]—A., the holder of a publican's country licence, got notice to quit on Sept. 29, but before that date he got his licence renewed, & refused to quit. The landlord expelled A. by force on Oct. 8, & J. entered into possession. At a special transfer sessions on Oct. 27, though J. had given no notices, the justices granted to J. a licence under Alehouse Act, 1828 (c. 61), s. 14. On a *certiorari* to quash the licence:—*Held*: a *certiorari* being matter of discretion, it would not be granted as A.'s object seemed to be to blackmail his landlord.

This writ of *certiorari* is not a matter of right. App't. for it is certainly not an aggrieved party, for the failure to obtain blackmail cannot be recognised as a grievance (CAVE, J.).

This is not a writ which is obtainable *ex debito justitiæ*, it is an application on which we have a right to exercise our discretion (LORD COLERIDGE, C.J.).—*R. v. GROVE, ETC., WILTSHIRE JJ.* (1893), 57 J. P. 454; *sub nom.* *R. v. WILTSHIRE (TISBURY DIVISION) LICENSING JJ.*, 9 T. L. R. 185, D. C.

Annotation:—*Reid. R. v. Bath JJ.*, *Ex p. Spiers & Pond* (1908), 99 L. T. 54.

3338. — —.]—The holder of a licence of a public-house about to be pulled down for a public purpose, gave the notices required by Alehouse Act, 1828 (c. 61), s. 14, of his intention to apply for a licence in respect of another house not then licensed. Justices in transfer sessions granted the licence. A rule *nisi* for a *certiorari* was subsequently applied for by certain prosecutors, residents in the district, who alleged that notices ought also to have been given in compliance with Licensing Act, 1872 (c. 94), s. 40. The licence was granted on Jan. 26, & the application for the rule was not made until May 17, following:—*Held*: assuming that *certiorari* was a fitting remedy, a *certiorari* ought not to go in the present case, because of the delay in making the application, & because prosecutors had not shown that they had a peculiar grievance of their own beyond some inconvenience suffered by them in common with the rest of the public.—*R. v. NICHOLSON*, [1899] 2 Q. B. 455; 68 L. J. Q. B. 1034; 81 L. T. 257;

64 J. P. 388; 48 W. R. 52; 15 T. L. R. 509; 43 Sol. Jo. 744, C. A.

Annotation:—*Consd. R. v. Richmond Confirming Authority*, *Ex p. Howitt*, [1921] 1 K. B. 248.

3339. — —.]—Under an application for an alehouse licence under Alehouse Act, 1828 (c. 61), there is no power in the justices to hold an adjourned meeting in the month of Oct. A trade rival has a sufficient interest in the decision upon such an application to constitute him a “person aggrieved” if an objection to the jurisdiction of the justices taken by him is overruled, & the application is granted & confirmed by them, & therefore, in a proper case, he is entitled to a writ of *certiorari* to remove into the High Ct. the confirming order of the justices.—*R. v. GROOM*, *Ex p. COBBOLD*, [1901] 2 K. B. 157; 70 L. J. K. B. 636; 84 L. T. 534; 65 J. P. 452; 49 W. R. 484; 17 T. L. R. 433; 45 Sol. Jo. 448, D. C.

Annotations:—*Folld. R. v. Richmond Confirming Authority*, *Ex p. Howitt*, [1921] 1 K. B. 248. *Reid. R. v. Butt*, *Ex p. Brooke* (1922), 38 T. L. R. 537.

3340. — —.]—An application was made to licensing justices by T., the secretary of L. & Co., for a licence for the sale of intoxicating liquor in respect of premises occupied by L. & Co. The application was opposed by H., the licensee of other premises in the same borough, but was granted by the licensing justices. Before the confirmation of the grant T. died. At the meeting of the confirming authority an application was made to confirm the grant, but to substitute in the licence the name of B., the secretary of L. & Co., for that of T. This application was opposed by H., on the ground that the confirming authority had no jurisdiction to grant it, but the application was nevertheless granted:—*Held*: the confirming authority acted in excess of its jurisdiction. H. was a person aggrieved thereby, & as such was entitled to a writ of *certiorari ex debito justitiæ*.—*R. v. RICHMOND CONFIRMING AUTHORITY*, *Ex p. Howitt*, [1921] 1 K. B. 248; 90 L. J. K. B. 413; 124 L. T. 345; 85 J. P. 84; 37 T. L. R. 62, D. C.

Annotation:—*Reid. R. v. Butt*, *Ex p. Brooke* (1922), 38 T. L. R. 537.

3341. — —.]—A licensing authority under Cinematograph Act, 1909 (c. 30), granted to a theatre proprietor a licence for the exhibition of cinematograph films at his theatre. The licensee was subject to the condition that the licensee should not exhibit any film if he had notice that the licensing authority objected to it. A firm who had acquired the sole right of exhibition of a certain film in the district in which the theatre was situated entered into an agreement with the licensee for the exhibition of the film at his theatre. The licensing authority having given notice to the licensee that they objected to the exhibition of the film the firm applied for a writ of *certiorari* to bring up the notice to be quashed on the ground that the condition attached to the licence was unreasonable & void & that they were aggrieved by the notice as being destructive of their property:—*Held*: whether the condition was unreasonable or not app'ts. were not persons who were aggrieved by the notice & were not entitled to apply for a *certiorari*.—*Ex p. SROTT*, [1916] 1 K. B. 7; 85 L. J. K. B. 502; 114 L. T. 234; 80 J. P. 169; 32 T. L. R. 84; 60 Sol. Jo. 418, D. C.

Annotations:—*Mentd. R. v. Burnley JJ.*, *Ex p. Longmore* (1916), 85 L. J. K. B. 1565; *Stott v. Gamble*, [1916] 2 K. B. 504.

— —.]—*See, further*, Nos. 2839, 3309, 3310, 3313, 3315–3324, 3331, *ante*.

3342. *When made in vacation—What rule issued.*—A judge's order or fiat for a *certiorari* to issue in vacation can only be granted *nisi*.—*R. v. CHIPPING*

Sect. 9.—Procedure: Sub-sect. 3, A. (a) & (b).]

SODBURY (INHABITANTS) (1834), 3 Nev. & M. K. B. 104; 2 Nev. & M. M. C. 99; 3 L. J. M. C. 61.

Annotation.—*Consd. R. v. Newton Ferrers* (1846), 9 Q. B. 32.

3343. Whether made ex parte.—*R. v. NEWTON FERRERS (INHABITANTS)*, No. 2907, *ante*.

3344. —[*R. v. ALLAN*, No. 3350, *post*.
Time for.—*See Sub-sect. 3, A. (b), post*.

(b) Time for.

See, now, C. O. R., rr. 21, 30, 64.

3345. General rule.—13 Geo. 2, c. 18, s. 5, only applies to orders, etc., of justices, & there is no general rule of practice which requires application for a *certiorari* to be made within six months of the making of the order sought to be quashed.—*R. v. SHEFFIELD CORPN.* (1871), L. R. 6 Q. B. 652; 40 L. J. Q. B. 247; 36 J. P. 37; *sub nom. ROBERTS v. SHEFFIELD CORPN.*, 24 L. T. 659; 36 J. P. 229; 19 W. R. 1159.

Annotations.—*Mentd. R. v. Liverpool Corpn.* (1872), 41 L. J. Q. B. 175; *R. v. Liverpool Corpn.* (1873), 28 L. T. 500; *A-G. v. Brecon Corpn.* (1878), 10 Ch. D. 204; *R. v. Norwich Corpn.* (1882), 30 W. R. 752; *Ward v. Sheffield Corpn.* (1887), 19 Q. B. D. 22; *A-G. v. Swansea Corpn.* [1898] 1 Ch. 602; *A-G. v. Tynemouth Corpn.*, [1898] 1 Q. B. 604.

3346. When time begins to run.—Making of the order.—Whatever cause of delay.—(1) A case sent back to sessions to be restated, must be reheard, & sessions may receive further evidence, & make a new order on such rehearing.

(2) The *certiorari* by which the original order was removed, does not operate to remove the subsequent one, & the party wishing to contest such order, must obtain a *certiorari*, & remove it.

(3) Under 13 Geo. 2, c. 18, s. 5, a *certiorari* cannot be applied for after the expiration of six calendar months from the making of the order to be removed, whatever may have been the cause of delay.—*R. v. BLOXAM* (1834), 1 Ad. & El. 386; 3 Nev. & M. K. B. 385; 2 Nev. & M. M. C. 269; 3 L. J. M. C. 115; 110 E. R. 1254.

Annotation.—*As to (3) Reidd. R. v. Anglesea JJ.* (1845), 10 J. P. 665.

3347. —[—(1) On Apr. 20, the ct. of quarter sessions granted a case for the opinion of the Ct. of Q. B. On Oct. 13, notice in writing of an intended application for a writ of *certiorari* to bring up the order of sessions, was served upon two justices. On Oct. 20, an application was made at chambers, for a judge's fiat allowing the issuing of a *certiorari*. No judge being in town on that day, an affidavit of notice to the justices, & of the other necessary facts, was sworn before a comr., & on the same day, the affidavit was filed at the Crown Office, & a writ of *certiorari* issued. On Oct. 21, the judge's fiat was obtained & filed at the Crown Office. Upon motion to quash the writ of *certiorari quia improvide emanavit*.—*Held*: the six months within which the application was required to be made, must be reckoned from the day of the order of sessions, & not from the last day of sessions.

(2) Where in the original affidavit, the deponent swore that he had served one of the justices, by leaving a copy of the notice at his chambers on Oct. 13, & this affidavit was objected to as being insufficient.—*Held*: an affidavit might be produced, stating in explanation, that the notice had been left in the letter-box, at the chambers of the magistrate, & that the magistrate had since acknowledged that he had "duly received the

notice with his other letters of that day," such affidavit being sufficient as showing that due service had been effected.—*R. v. ST. MARY, WHITECHAPEL (INHABITANTS)* (1843), 2 Dowl. N. S. 964; 12 L. J. M. C. 85; 1 L. T. O. S. 171; 7 J. P. 354; 7 Jur. 602.

Annotations.—*As to (1) Reidd. R. v. Allan* (1864), 4 B. & S. 915; *R. v. Hodgson* (1864), 28 J. P. 484.

3348. —**Second application.—First certiorari quashed.**—A *certiorari* to remove an order of quarter sessions had been quashed because the affidavit on which it had issued omitted to state that the justices on whom it was served had been present at the sessions at the making of the order pursuant to 13 Geo. 2, c. 18, s. 5. On motion for a fresh *certiorari* to remove the same order after the six months had expired.—*Held*: the writ had not been moved or applied for within the meaning of the Act by the former application, & the present was a fresh motion & consequently out of time.—*R. v. CARTWORTH (INHABITANTS)* (1843), 1 Dow. & L. 837, 842; 8 J. P. 104; 8 Jur. 61; *sub nom.* —*v. —*, 13 L. J. M. C. 28.

Annotation.—*Mentd. R. v. West Riding JJ.* (1844), 1 New Sess. Cas. 406.

3349. —**Delay caused by absence of judge.**—A *certiorari* to bring up an order of sessions must in all cases be applied for before the expiration of six calendar months from the time of the making of the order which it is sought to remove, 13 Geo. 2, c. 18, s. 5 being imperative in this respect. Where, therefore, an attempt was made to obtain the necessary writ at judges' chambers within the six months, but the writ could not then be obtained, as the attempt was made in the Easter holidays, when no judge was in attendance.—*Held*: a subsequent application for the writ, after the expiration of the six months, was too late, although such application was made on the first day after the expiration of such easter holidays.—*R. v. ANGLESEA JJ.* (1846), 1 Saund. & C. 76; 7 L. T. O. S. 67; 10 J. P. 665; 10 Jur. 817.

3350. —[—*Deft. having been convicted on Feb. 23, 1863, a notice was, on Aug. 15 following, given to the justices, intimating that it was the intention of deft. to apply, on Aug. 20 for a certiorari to bring up the conviction. This notice was given under 13 Geo. 2, c. 18, s. 5. On Aug. 21, deft.'s attorney left with the judge's clerk the affidavit on which the application was founded. On Aug. 22, which was a Saturday, he again went to judge's chambers, but being vacation time, the judge attended only on Tuesdays & Fridays, & it was impossible therefore to obtain a hearing till the following Tuesday, when the judge refused to make the order, on the ground that the application was too late.—Held*: (1) the application was in time, & the judge ought to have made the order; (2) the application should not have been made *ex p.*—*R. v. ALLAN* (1864), 4 B. & S. 915; 122 E. R. 702; *sub nom. R. v. ALLEN*, 33 L. J. M. C. 98; 10 Jur. N. S. 796; *sub nom. R. v. HODGSON*, 3 New Rep. 508; 9 L. T. 761; 28 J. P. 484; 12 W. R. 423.

Annotations.—*Generally, Mentd. Leeson v. General Council of Medical Education & Registration* (1889), 43 Ch. D. 366; *R. v. Henley*, [1892] 1 Q. B. 504; *Allinson v. General Council of Medical Education & Registration*, [1894] 1 Q. B. 750; *R. v. Huggins* (1895), 43 W. R. 329; *R. v. Burton, Ex p. Young*, [1897] 2 Q. B. 468; *R. v. London County JJ., Ex p. South Metropolitan Gas Co.* (1907), 97 L. T. 716.

3351. —**Order confirmed on appeal.**—Under 13 Geo. 2, c. 18, s. 5, a *certiorari* to remove an order of justices for stopping a highway may be applied

PART IX. SECT. 9, SUB-SECT. 3.—A. (b).

3345i. General rule.—An application

for a *certiorari* to remove an assessment should be made promptly.—*Ex p. GEROW* (1859), 9 N. B. R. (4 All.) 269.

—**CAN.**

3345ii. —[—*KANE v. KASLO CITY CORPN.* (1896), 4 B. C. R. 486.—**CAN.**

for within six calendar months after such order has been confirmed at sessions, though more than six calendar months have elapsed since the order was made.—*R. v. MIDDLESEX JJ.* (1836), 5 Ad. & El. 626; 2 Har. & W. 407; 1 Nev. & P. K. B. 92; Nev. & P. M. O. 6; 6 L. J. M. C. 10; 111 E. R. 1302.

Annotation.—*Mentd. R. v. Milverton* (1836), 2 Har. & W. 434.

3352. ———.]—(1) A *certiorari* had issued to bring up an order of sessions confirming an order of justices. The order of sessions being brought up on return was quashed, but the order of justices not being returned with it:—*Held*: a fresh writ of *certiorari* might issue to bring up the order of justices.

(2) The six months for applying for a *certiorari* to bring up an order of justices which has been appealed against & confirmed by sessions, run from the date of confirmation & not of the original order.—*R. v. MORICE* (1845), 2 Dow. & L. 952; 1 New Sess. Cas. 585; 14 L. J. M. C. 75; *sub nom. R. v. HERTFORDSHIRE JJ.*, 5 L. T. O. S. 78; 9 Jur. 731.

Annotations.—*Generally, Mentd. R. v. Preston* (1848), 12 Q. B. 816; *Wray v. Toke* (1848), 12 Q. B. 492.

3353. What is delay—Application in year following order.]—Judgment on demurrer having been given in Sept. 1841, against a party charged on presentment to the Comrs. of Sewers, on which a rate was levied, & an order having been made to pay the rate in June, 1842, & a distress, levied thereon, in July, 1842 a rule was applied for in Trinity term 1843, for a *certiorari* to remove the presentment, judgment, rate & order:—*Held*: the rule would be discharged on the ground that the application was out of time.—*R. v. TOWER HAMLETS SEWERS COMRS.* (1843), 5 Q. B. 357; 1 Dav. & Mer. 232; 13 L. J. Q. B. 12; 2 L. T. O. S. 167; 8 J. P. 214; 7 Jur. 1169; 114 E. R. 1284.

3354. ——— Application in term following order.]—On Jan. 16 an order was made by the town council of a municipal borough for payment out of the borough fund of expenses not legally chargeable thereon under Municipal Corpn. Act, 1835 (c. 76). The same day the relator gave notice of his objection, & threatened to apply to the Ct. of Q. B. The money was paid in two portions, in May & July respectively. The accounts of the borough were audited in Sept.:—*Held*: an application in the following Hilary term for a *certiorari* to remove the order under Municipal Corpn. (General) Act, 1837 (c. 78), s. 44, for the purpose of quashing, was not to be refused on the ground that it was made too late.—*R. v. NEWBURY TOWN COUNCIL* (1851), 16 L. T. O. S. 434; 15 J. P. 115.

3355. Application by Crown—Time limit not applicable.]—*R. v. BERKLEY & BRAGGE*, No. 2478, *ante*.

3356. ———.]—The provision contained in C. O. R., r. 21, limiting the time within which a writ of *certiorari* to remove proceeding before justices may be applied for, does not apply to the

issue of a writ of *certiorari* at the instance of the A.-G. on behalf of the Crown.—*R. v. AMENDT*, [1915] 2 K. B. 276; 84 L. J. K. B. 1259; 113 L. T. 35; 79 J. P. 324; 31 T. L. R. 287; 59 Sol. Jo. 363, O. A.

3357. Order or decision of justices—Validity of church rate—53 Geo. 3, c. 127, s. 7.]—In order to take away the summary jurisdiction of magistrates under sect. 7 of the above Act, the party proceeded against must at once give notice to the justices that he disputes the validity of the rate, or his liability to pay it. If he argues an objection to the rate before the justices, & they decide upon it, & make an order, & he then gives notice that he disputes the validity of the rate, the ct. will not grant a *certiorari* to remove the order.—*R. v. WICKSTED & PARDOE* (SALOP JJ.) (1860), 6 Jur. N. S. 143.

3358. ——— Order of licensing justices.]—*R. v. NICHOLSON*, No. 3338, *ante*.

3359. ——— 13 Geo. 2, c. 18, s. 5.]—*R. v. BOUGHEY* (1791), 4 Term Rep. 281; *R. v. BLOXAM* (1834), 1 Ad. & El. 386; *R. v. ANGLESEA JJ.* (1846), 1 Saund. & C. 76; *R. v. HODGSON* (1863), 9 L. T. 290; *R. v. ST. MARY, WHITECHAPEL (INHABITANTS)* (1843), 2 Dowl. N. S. 964; *R. v. CARTWORTH (INHABITANTS)* (1843), 1 Dow. & L. 837, 842; *R. v. MIDDLESEX JJ.* (1836), 5 Ad. & El. 626; *R. v. HERTFORDSHIRE JJ.* (1845), 9 Jur. 731.

3360. Time specified in order of Secretary of State—Delimitation of boundaries—Local Government Act, 1858 (c. 98), s. 20.]—Under the provisions of sect. 16 of the above Act, the ratepayers of T. petitioned one of the Secretaries of State to settle the boundaries with a view to the adoption of the Act. An order was made setting out the boundaries, & a resolution was duly carried for the adoption of the Act. An appeal was presented to the Secretary of State by S., a ratepayer, on the ground that the boundaries, as set out, comprised land not included within the limits from which the petition proceeded. After inquiry into the circumstances, the Secretary of State dismissed the petition, & ordered, under sect. 20 of the above Act, that the Act should, after the expiration of one month from the date of the order, have the force of law within the district of T.:—*Held*: the ct. would not, after all this had been done, issue a *certiorari* to bring up the order for settling the boundaries of the district.—*Re LOCAL GOVERNMENT ACT, 1858, TODMORDEN DISTRICT, Ex p. SMITH* (1861), 1 B. & S. 412; 4 L. T. 509; 121 E. R. 769; *sub nom. Re TODMORDEN DISTRICT*, 30 L. J. Q. B. 305; 25 J. P. 518.

Annotation.—*Mentd. Graham v. Berry* (1865), 3 Moo. P. C. C. N. S. 207.

3361. Reopening poor law accounts—Recovery of sums paid in error—After accounts audited.]—In the auditing of the accounts of a poor law union, the cost of maintenance of a pauper lunatic irremovable by five years' residence, having, since

3353i. What is delay—Application in year following order.]—*R. v. FLEWELLING* (1866), 6 All. 419.—CAN.

3353ii. ———.]—*R. v. KENNEDY* (1866), 6 All. 335.—CAN.

3353iii. ———.]—*R. v. FLYNN* (LOCAL GOVERNMENT BOARD AUDITOR) (1911), 46 L. L. T. 22.—IR.

3353iv. ——— No reason for delay given.]—*Ex p. SWIM* (1889), 28 N. B. R. 138.—CAN.

3354i. ——— Application in term following order—Not unreasonable delay.]

—*Ex p. HERBERT* (1854), 8 N. B. R. 108.—CAN.

3354ii. ———.]—*Ex p. O'REGAN* (1855), 8 N. B. R. 261.—CAN.

3354iii. ———.]—An application for a *certiorari* should be made at the first term after the conviction; but where the justice had no jurisdiction in the matter, a *certiorari* was granted, though a term had elapsed.—*Ex p. MULHERN* (1859), 9 N. B. R. (4 All.) 259.—CAN.

3354iv. ———.]—*R. v.*

GOLDING (1874), 2 N. B. R. (Pag.) 385.—CAN.

Application two terms following order.—A *certiorari* was refused where two terms had elapsed.—*Ex p. LIPSETT* (1885), 25 N. B. R. 66.—CAN.

g. ——— Where judge had no jurisdiction.—A *certiorari* was granted though two terms had since elapsed, & the delay was unaccounted for, it being clear that the justice had no jurisdiction.—*Ex p. LONG* (1888), 27 N. B. R. 495.—CAN.

h. Extension of time for application.]

Sect. 9.—*Procedure: Sub-sect. 3, A. (b) & (c).*

Mar. 1854, been charged to the parish of irremovability & allowed in the half-yearly audits, at the audit of the half-yearly accounts unto Michaelmas, 1860, objection was taken by the parish, & the auditor disallowed the costs for those six months against the parish & charged it to the union, but refused to re-open the accounts previously audited. On a rule calling on the auditor to show cause why he should not allow the parish the sums they had erroneously paid in previous years & charge them to the union, the ct. discharged the rule, on the ground that the parish ought to have objected at the previous audits.—*R. v. CHIDDINGTON (INHABITANTS)* (1862), 2 B. & S. 294; 31 L. J. M. C. 121; 6 L. T. 44; 26 J. P. 246; 121 E. R. 1082.

3362. Taxation of costs—Objection made after taxation.—On an application for a *certiorari* to bring up an order of sessions for payment of costs on the ground that the costs were taxed after the sessions had expired:—*Held*: the writ would be refused on the ground that the party should have objected at the time of taxation.—*Ex p. WATKINS* (1862), 5 L. T. 605; 26 J. P. 71; 10 W. R. 249.

Annotation.—*Mentl. R. v. Hampshire JJ.* (1864), 3 New Rep. 487.

3363. Award of compensation—Compulsory purchase of land.—Upon application for a writ of *certiorari* to bring up & quash the proceedings upon an inquisition before the sheriff as to the amount of compensation to be awarded to a claimant under Lands Clauses Consolidation Act, 1845 (c.18), on the ground that the jury in assessing the compensation had taken into consideration matters which were not legally the subject of compensation:—*Held*: the ct. having a discretion whether they would grant a writ of *certiorari*, would not do so where appcts. for the writ had allowed five months to expire without any objection to the proceedings & had paid costs & taken various other steps upon the footing that they were valid.—*R. v. SHEWARD* (1880), 9 Q. B. D. 741; 49 L. J. Q. B. 716, C. A.

—*J*.—*See, further, COMPULSORY PURCHASE OF LAND & COMPENSATION, Vol. XI, pp. 209 et seq.*

3364. Liverpool Borough Court (Removal of Actions) Act, 1842 (c. 11), s. 3—Application within one month of filing of statement of claim.—*EDWARDS v. LIVERPOOL CORPN.*, No. 2491, ante.

—Under Crown Rules a judge has power to extend the time for bringing an application by way of *certiorari* to quash a conviction.—*R. v. ZEES*, [1921] 1 W. W. R. 782; 14 Sask. L. R. 155; 34 Can. Crim. Cas. 212.—CAN.

k. — *Where time limit expires on a holiday.*—*Re NELSON CITY BYE-LAW No. 11* (1898), 6 B. C. R. 163.—CAN.

PART IX. SECT. 9, SUB-SECT. 3.—A. (c).

l. *Whether necessary.*—*R. v. PETERMAN* (1864), 23 U. C. R. 516.—CAN.

m. — *J*.—Notice of application for a *certiorari* must be given to the magistrates by whom the order was made.—*R. v. ELLIS* (1866), 25 U. C. R. 324.—CAN.

n. — *J*.—*Re PLUNKETT* (1895), 3 B. C. R. 484.—CAN.

o. — *J*.—Under Crown Rules a notice of motion, unless otherwise

directed by a judge, is imperative & the failure to give notice takes away the jurisdiction of the ct. to hear the motion.—*R. v. CROSBY, R. v. L'ESPERANCE*, [1921] 1 W. W. R. 103.—CAN.

p. — *Where application by prosecutor.*—Where the application for a *certiorari* is made by the prosecutor, no notice to the justice is necessary.—*R. v. MURRAY* (1867), 27 U. C. R. 134.—CAN.

q. — *Where conviction bad & no appeal available.*—On the facts:—*Held*: no notice of intention to move for a *certiorari* to quash the conviction was necessary.—*R. v. CASWELL* (1873), 33 U. C. R. 303.—CAN.

r. — *Where records of conviction passed into the hands of another judge.*—Although justices may be only entitled to the statutory notice, yet, where the records of conviction have passed into custody of another judge not entitled to notice, the justices ought to have notice of the motion for the

(c) *Notice of.*

See, now, C. O. R., r. 21.

3365. Whether necessary—Second certiorari issued in same matter.—If the want of an original is assigned for error, & upon a *certiorari* a return is made that there is no original, deft. in error may upon a suggestion that there is an original of another term sue out a second *certiorari* without giving any notice to the pltt.'s attorney.—*LEVING v. CALVERLY* (1701), 1 Ld. Raym. 695; 12 Mod. Rep. 561; 91 E. R. 1363; *sub nom. LEVIN v. —*, 1 Com. 118.

3366. Six days' notice—Whether waived—By motion to enlarge rule.—*R. v. GLAMORGANSHIRE JJ.* (1793), 5 Term Rep. 279; Nolan, 249; 101 E. R. 157.

Annotation.—*Ex Reid. p. Roberts* (1886), 50 J. P. 567.

3367. — Form & sufficiency of—Intention to move for rule.—*Re FLOUNDERS* (1833), 4 B. & Ad. 865; 110 E. R. 681; *sub nom. R. v. FLOUNDERS*, 1 Nev. & M. K. B. 592; 1 Nev. & M. M. C. 131.

Annotations.—*Consd. Ex p. Fentiman* (1834), 2 Ad. & El. 127. *Reid. R. v. Rose* (1845), 3 Dow. & L. 359; *R. v. Allan* (1864), 4 B. & S. 915.

3368. — — — — ——*J*.—*R. v. ROSE* (1845), 3 Dow. & L. 359; 2 New Sess. Cas. 166; 15 L. J. M. C. 6; 6 L. T. O. S. 160.

3369. — — — — ——*Ex p. PATMERE* (1845), 9 J. P. Jo. 787.

3370. — Whether day of service included.—*R. v. GOODENOUGH* (1835), 2 Ad. & El. 463; 111 E. R. 179; *sub nom. R. v. CUMBERLAND JJ.*, 1 Har. & W. 16; 4 Nev. & M. K. B. 378; 2 Nev. & M. M. C. 552; 4 L. J. M. C. 72.

3371. — — — — ——*J*.—*R. v. EAST RIDING OF YORKSHIRE JJ.* (1843), 1 L. T. O. S. 311.

3372. — — Must precede motion for rule nisi.—*Ex p. ROBERTS* (1886), 50 J. P. 567.

3373. Contents of—Must state name of party applying for writ.—The notice required by 13 Geo. 2, c. 18, s. 5, for removing an order of justices by *certiorari*, must state on the face of it the name of the party applying for the writ.—*R. v. LANCASHIRE JJ.* (1821), 4 B. & Ald. 289; 106 F. R. 944.

Annotations.—*Reid. R. v. Cambridgeshire JJ.* (1832), 3 B. & Ad. 887; *R. v. Lancashire JJ.* (1839), 11 Ad. & El. 144; *R. v. How* (1840), 11 Ad. & El. 159.

3374. — — — — ——Under 13 Geo. 2, c. 18, s. 5, notice to justices of an application for a *certiorari* to bring up their order, should state that the notice is given by the party suing forth the *certiorari*, & should specify the party, & upon such application, the party suing forth the writ should be identified on affidavit with prosecutor named in

writ proposed to be directed to such officer.—*R. v. STARKEY* (1890), 6 Man. L. R. 588.—CAN.

3366 l. Six days' notice—Whether waived.—A preliminary objection, that the magistrate had not six full days' notice of the application for the writ of *certiorari*, was overruled, on the ground that the magistrate, on the facts appearing in the case, had waived the right to take the objection.—*R. v. WHITAKER* (1894), 24 O. R. 437.—CAN.

3372 l. — Must precede motion for rule nisi.—Notice must be given before the application, even though it be for an order nisi in the first instance.—*Ex p. DUNN, Ex p. ASPINALL* (1906), V. L. R. 584.—AUS.

3373 l. — — — — ——ANON. (1870), 4 S. A. L. R. 21.—AUS.

3373 l. Contents of—Must state name of party applying for writ.—The notice of motion for a *certiorari* must show who the party moving is.—*R. v. STARKEY* (1890), 6 Man. L. R. 588.—CAN.

the notice, & the justices therein named with those on whom notice has been served. It is not enough that the party giving the notice is the only person making affidavit in support of the rule on the merits, or that, from such affidavit, it appears that an order was made by justices of the same name as those to whom the notice is given, & was of the same date & to the same effect as that described in the notice & the rule *nisi*.

The objection to the notice is not cured by the rule *nisi* being enlarged by consent.—*R. v. How* (1840), 11 Ad. & El. 159; 4 Per. & Dav. 320; 118 E. R. 375; *sub nom.* *R. v. SHREWSBURY & SALOP JJ.*, 9 Dowl. 501; Woll. 61; 10 L. J. M. C. 8; 5 J. P. 45; 5 Jur. 291.

3375. Signature to—By one of several applicants—Insufficient.—A notice to justices of a motion to be made for a *certiorari* "on behalf of the churchwardens & overseers of S." if signed only by one churchwarden, is not a sufficient notice by the "party or parties suing forth" the writ, within 13 Geo. 2, c. 18, s. 5.—*R. v. CAMBRIDGESHIRE JJ.* (1832), 3 B. & Ad. 887; 1 L. J. M. C. 97; 110 E. R. 326.

Annotation.—*Refd.* *R. v. Westmoreland JJ.* (1843), 1 Dow. & L. 178.

3376. — By solicitor for applicant—Sufficient.]—Under 13 Geo. 2, c. 18, s. 5, notice to justices of motion for a *certiorari*, subscribed by A., solr. for C., the party intending to move, & in other respects regular, is sufficient to authorise the motion, though the notice does not expressly state that C. is suing for the *certiorari* & there is no affidavit that the notice is in fact served at the instance of C., if the justices show cause & do not offer affidavits to the contrary.—*R. v. LANCASHIRE JJ.* (1839), 11 Ad. & El. 144; 3 Per. & Dav. 86; 9 L. J. Q. B. 9; 3 J. P. 768; 4 Jur. 121; 113 E. R. 369.

Annotations.—*Foll.* *R. v. Solly* (1840), 9 Dowl. 115. *Consd.* *R. v. West Riding JJ.* (1844), 1 New Sess. Cas. 406. *Refd.* *R. v. Kent JJ.* (1873), 42 L. J. M. C. 112. *Mentd.* *R. v. Boucher* (1842), 3 Q. B. 641.

3377. — — — — —.]—Notice of an intended application for a *certiorari* to remove an order of justices in quarter sessions made on the hearing of an appeal stated the names of applt. & resp. & was signed by B., attorney for resps., & the notice was given to three justices who were sworn to have been present at the trial & hearing of the appeal:—*Held:* this was a sufficient notice.—*R. v. WILTS JJ.* (1841), 9 Dowl. 524; 10 L. J. M. C. 25; 5 J. P. 44; 5 Jur. 291.

3378. — — — — —.]—(1) A notice of application for a *certiorari* is sufficient if signed by the attorney to appts.

(2) Where appts. are churchwardens the application need not state their names.—*R. v. SOLLY* (1840), 9 Dowl. 115; Woll. 6; 4 J. P. 749.

Annotations.—*As to* (1) *Foll.* *R. v. Westmoreland JJ.* (1843), 1 Dow. & L. 178. *Refd.* *R. v. Sevenoaks* (1845), 9 J. P. 485.

3379. — — — — —.]—Notice of motion for a writ of *certiorari* signed "W. & S., attorneys for the said overseers of the township of K." is a good notice, without any distinct statement of the names of such overseers.—*R. v. WESTMORELAND JJ.* (1843), 1 Dow. & L. 178; 12 L. J. M. C. 113; 7 J. P. 658; 7 Jur. 898.

Annotations.—*Mentd.* *R. v. Eardisland* (1854), 18 J. P. 649; *R. v. Lambeth* (1854), 18 J. P. Jo. 790.

3380. — — — — —.]—Upon the trial of a parish appeal F., one of the justices, who was a rated inhabitant of applt. parish, was on the bench during the hearing, & in the course of the proceedings referred the chairman of quarter

sessions to some of the documents put in evidence. Upon an observation being made that he was a party interested, F. stated that he should take no part in the decision, but he remained in ct. until the final decision, which was in favour of appls. It was sworn that he did not vote or give any opinion upon the question at issue, nor did he influence the decision of the other justices present, & that if he had not believed that the parties were satisfied with his assurance that he would take no part, he would have retired from ct. during the trial. The notice of application for a *certiorari* under 13 Geo. 2, c. 18, s. 5, was sworn to have been served on F. & another justice who were present at the sessions when the appeal was heard:—*Held:* (1) the notice was properly served on F. as a justice, by & before whom the order of sessions was made; (2) the notice stating that application for a *certiorari* would be made on behalf of the inhabitants of resp. parish & signed "M., attorney for the inhabitants of resp. parish" was sufficient.—*R. v. SUFFOLK JJ.* (1852), 18 Q. B. 416; 21 L. J. M. C. 169; 19 L. T. O. S. 107; 16 J. P. 296; 10 Jur. 612; 118 E. R. 156.

Annotations.—*As to* (1) *Refd.* *R. v. Middlesex JJ.* (1854), 18 J. P. Jo. 390; *R. v. Surrey JJ.* (1855), 19 J. P. Jo. 755; *Hayman v. Rugby School* (1874), L. R. 18 Eq. 28; *R. v. Budden, Kent JJ.* (1896), 60 J. P. 166.

3381. — — — — —.]—A notice for a *certiorari* to bring up an allowance of accounts by a poor law auditor, under Poor Law Amendment Act, 1844 (c. 101), s. 35, signed by an attorney on behalf of the inhabitants of a parish, is sufficient.—*R. v. CHIDDINGTON (INHABITANTS)* (1861), 25 J. P. 118; 7 Jur. N. S. 125; *subsequent proceedings* (1862), 2 B. & S. 294.

3382. Objection to sufficiency of—After writ issued.]—In order to obtain a *certiorari* to bring up an order of justices, it is not sufficient to serve a notice on one justice present at the sessions making the order & another justice of the same county not present.

It is not necessarily too late to object to the service of the notice after writ issued, although the consequences may be that if the writ be quashed, it will be too late to sue out a fresh one.

It is competent for the parties in an appeal to object to the notices to justices previous to obtaining a *certiorari*.—*R. v. RATTISLAW* (1837), 5 Dowl. 539; Will. Woll. & Dav. 185; 1 J. P. 136.

Annotations.—*Refd.* *R. v. Cartworth* (1844), 8 J. P. 104. *Mentd.* *R. v. Basingstoke* (1849), 3 New Sess. Cas. 693.

3383. — Not waived by consent to enlargement of rule.]—*R. v. How*, No. 3374, *ante*.

3384. When objection may be made—On appeal.]—*R. v. RATTISLAW*, No. 3382, *ante*.

3385. Service of notice on justices—Necessity for.]—When an order of sessions has been returned to the ct. under a *certiorari* & a rule is then obtained to quash the order, it is a good preliminary objection to an argument on such rule that no notice of it has been served on the justices who made the order, although it was served on the parties interested in supporting it.—*R. v. SPACKMAN* (1841), 9 Dowl. 1060.

Annotation.—*Refd.* *R. v. Buckinghamshire JJ.* (1845), 9 J. P. 70.

3386. — Sufficiency of—One justice adjudicating—& one not present.]—*R. v. RATTISLAW*, No. 3382, *ante*.

3387. — — — — — On three justices—Sworn to have been present.]—*R. v. WILTS JJ.*, No. 3377, *ante*.

3388. — — — — — On two justices—Sworn to

Sect. 9.—Procedure: Sub-sect. 3, A. (c) & (d) i. & ii.] have been present.]—R. v. CORNWALL JJ., No. 3443, post.

3389. ——— **One justice not adjudicating.]—**Upon a motion for *certiorari* to remove an order of quarter sessions, upon affidavit which stated that service was made by deponent on A. & B., two magistrates of the county of H., who were present in ct. at time of making the order:—*Held*: if one of the magistrates gave public intimation at the time that he did not intend to interfere, this would negative the service.—*R. v. HEREFORDSHIRE JJ.* (1845), 2 Dow. & L. 500; 1 New Sess. Cas. 413; 14 L. J. M. C. 44, n; 8 J. P. Jo. 819.

Annotation:—Mentd. R. v. Suffolk JJ. (1852), 18 Q. B. 416.

3390. ——— **—R. v. SUFFOLK JJ., No. 3380, ante.**

3391. ——— **Notice left in letter box of chambers—Admission of receipt.]—R. v. ST. MARY, WHITECHAPEL (INHABITANTS), No. 3347, ante.**

3392. ——— **Notice left with medical assistant of justice—Place not stated.]—**The affidavit of service of notice of an application for a *certiorari* to remove an order of justices, required by 13 Geo. 2, c. 18, s. 5, to be given to the justices making such order, stated, that the deponent did, on etc. serve R., one of the justices at the dwelling-house & usual place of abode of him, the said R. at, etc., by leaving a duplicate or counterpart of the notice with W., the medical assistant of the said R. he, the said R. being then ill in bed:—*Held*: this was insufficient, as it did not appear that the service of the notice upon W. was at the dwelling-house of R.—*R. v. NUNN* (1844), 1 New Sess. Cas. 49; *sub nom. R. v. COLCHESTER JJ.*, 2 L. T. O. S. 346; 8 J. P. Jo. 85.

3393. Affidavit—By attorney—Sufficiency of.]—R. v. WEST RIDING OF YORKSHIRE JJ., No. 3428, post.

(d) Affidavits in Support.

i. In General.

3394. Necessity for—On application by Crown—Or subject.]—R. v. EATON, No. 2468, ante.

3395. ——— **—In support of an application for a certiorari an affidavit must be produced.**

I cannot know without an affidavit that an inquisition has been taken. You must therefore have a copy, & suggest some grounds of defect, which cannot be done without an affidavit (*WIGHTMAN, J.*).—*R. v. SOUTHAMPTON Ry. Co.* (1842), 7 Jur. 238.

See, now, C. O. R., r. 234.

3396. How intituled.]—The affidavits to be used to obtain a rule *nisi* for a *certiorari*, should not bear any title.—*Ex p. NOHRO* (1823), 1 B. & C. 267; 107 E. R. 100; *sub nom. Re NOROUGH*, 1 L. J. O. S. K. B. 112.

Annotations:—Folld. H. v. Walworth (1846), 10 Jur. 967. *Reid. Re Gwynne & Evans* (1849), 7 Jur. 281.

3397. ——— **—(1) In moving for a certiorari to bring up a conviction of justices, the affidavits**

must be intituled "in the Q. B." only. If they are also intituled "The R. against so & so," they will be bad. So, also, if they are intituled "In the matter of the R. against so & so," for this will be held to refer to a cause in ct. & not to the mere subject matter of the affidavit.

(2) When a rule is discharged because the affidavits upon which it was obtained are wrongly intituled, it will be discharged without costs.—*Ex p. WALLWORTH* (1846), 2 New Mag. Cas. 391; 8 L. T. O. S. 146; *sub nom. R. v. MASSITER & ALLISON* (LANCASTER COUNTY JJ.); *Ex p. WEILLWORK*, 11 J. P. 185; *sub nom. R. v. WALLWORTH*, 10 Jur. 967.

3398. ——— **—A rule absolute had been granted & served in each of three appeals, in which sessions had confirmed a rate, subject to a case, but the writ had been served only in one. A rule to discharge a rule for a certiorari in the other two cases was ordered to be made absolute, unless the writs were served within a specified time. Upon each rule the affidavits are rightly intituled as in the ct. only, & not in any cause.**

The cause remains where it was & may be proceeded with till the writ is served. A man may keep the writ in his pocket, & serve it at the moment when further proceedings are about to be had (*per CUR.*).—*R. v. CHASEMORE* (1847), 2 New Mag. Cas. 270; 9 L. T. O. S. 265; 12 Jur. 11; 11 J. P. Jo. 420, 437.

See, now, C. O. R., r. 6.

3399. Jurat—Effect of omission of words "before me."]—R. v. BLOXHAM (INHABITANTS), No. 3552, post.

3400. ——— **—In the jurat of an affidavit, sworn in the country, for a certiorari to bring up an order of sessions, confirming an order of removal, the comr.'s name should be preceded by the words "before me"; & the omission of this is a fatal defect, & not a mere irregularity.—R. v. NORBURY (INHABITANTS) (1846), 6 Q. B. 534, n; 1 New Pract. Cas. 481; 1 New Mag. Cas. 519; 2 New Sess. Cas. 344; 15 L. J. Q. B. 264; 7 L. T. O. S. 138; 10 J. P. Jo. 293; 115 E. R. 200.**

Annotation:—Reid. Graham v. Ingleby (1848), 1 Exch. 651.

3401. Must set out copy of order objected to.]—R. v. WIGAN JJ., No. 3547, post.

3402. ——— **—It is an imperative rule that no order for a certiorari is to be granted unless at the time of making the application a verified copy of the conviction is produced to the ct.—Ex p. REYNOLDS** (1893), 9 T. L. R. 190, D. C.

See, now, C. O. R., r. 22.

3403. Whether affidavit in reply allowed.]—The sessions have jurisdiction under Nuisances Removal & Diseases Prevention Act, 1848 (c. 123), where there is some evidence that the person convicted is owner & occupier of the *locus in quo*.

Where a rule *nisi* had been obtained for a *certiorari*, & the affidavits on the other side disclosed such evidence, & an application to file fresh affidavits in answer, in support of the original motion was made:—*Held*: there was no new feature, & the application would be refused.—

PART IX. SECT. 9, SUB-SECT. 3.—A. (d) i.

3395 i. Necessity for—R. S. 1869, c. 17.]—R. v. McDONALD (1894), 26 N. S. R. 402.—CAN.

3395 ii. ——— **—R. v. POWER (1896), 28 N. S. R. 373.—CAN.**

3395 iii. ——— **Liquor Licence Act, 1895.]—BIGELOW v. R. (1900), 31 S. C. R. 128.—CAN.**

3396 i. How intituled.]—On application for a writ of *certiorari* the affidavits were entitled in the ct. below:—*Held*:

under Crown Rule 19, the judge might receive the affidavit notwithstanding the irregularity in form, & direct a memorandum to be made on the document that it was so received.—*MARSHALL v. SCHWARTZ* (1907), 41 N. S. R. 471.—CAN.

3401 i. Must set out copy of orders objected to.]—Copy of original proceedings must be attached to the affidavit.—*Ex p. EMMERSON* (1896), 33 N. B. R. 425.—CAN.

3401 ii. ——— **—Under Crown Rule 31, the production of a copy of the**

conviction verified by affidavit, at the time the motion is made, as the condition of granting an order for a writ of *certiorari*, is requisite.—*R. v. WELLS* (1896), 28 N. S. R. 547.—CAN.

3401 iii. ——— **—On application for a writ of certiorari to remove a conviction, a copy of the proceedings before the magistrate must be produced & verified by affidavit, or the affidavit must show positively that a copy could not be obtained & must disclose what the proceedings were.—Re CHAPMAN (1920), 3 W. W. R. 356.—CAN.**

R. v. GLOSSOP, *Ex p. ROBINSON* (1854), 2 W. R. 526.

On application to quash certiorari.]—See Nos. 3554, 3555, *post*.

On application to remove for trial—In civil cases.]—See Nos. 3139–3141, 3166, *ante*.

—In criminal cases.]—See Nos. 3210–3216, *ante*.

On application to remove depositions for bail.]—See Nos. 3629, 3630, *post*.

ii. As to Grounds of Application.

3404. Objections cannot be raised by affidavit—Which are matters of appeal.]—R. v. CAMBRIDGE-SHIRE JJ., No. 2909, *ante*.

3405. Grounds of objection—Must be specified.]—R. v. MANCHESTER & LEEDS RY. CO., No. 2495, *ante*.

3406. —.]—It is by no means a matter of course to remove a coroner's inquisition into this ct., & the affidavits upon which the application is made must in general state specifically the grounds of objection.—*Re APPLETON* (1839), 3 J. P. 738.

3407. —Must be suggested.]—R. v. SOUTHAMPTON RY. CO., No. 3395, *ante*.

3408. Jurisdiction not appearing on face of conviction—Affidavit must negative the jurisdiction.]—

(1) The ct. will not grant a *certiorari* to remove a conviction under 52 Geo. 3, c. 93, for using a dog & gun without a certificate, on the ground that jurisdiction does not appear on the face of the conviction, without an affidavit, negating the jurisdiction.

(2) Costs of showing cause against a rule in the first instance are never given.—*R. v. LONG* (1827), 1 Man. & Ry. K. B. 139; 1 Man. & Ry. M. C. 52.

3409. Defects on face of order of justices—Cannot be amended by affidavit.]—On an application for a *certiorari* to remove an order of justices for the purpose of quashing it for defects appearing on the face of it, the ct. will not look at affidavits to supply the defects.—*R. v. HAMPSHIRE JJ.* (1840), Woll. 24; 5 J. P. 12.

Annotation:—*Mentl. R. v. Wiltshire JJ.* (1840), 5 Jur. 217.

3410. Absence of jurisdiction—Not appearing on face of proceedings—May be shown by affidavit.]—

The ct. will grant a *certiorari* where a jury, summoned under Lands Clauses Consolidation Act, 1845 (c. 18), s. 68, to determine by their verdict whether lands have been injuriously affected by the execution of the works of a railway co., have awarded compensation for one of several claims, over which one they have no jurisdiction, although such excess of jurisdiction does not appear on the face of the proceedings. Such excess of jurisdiction may be shown by extrinsic evidence by affidavit.—*Re PENNY* (1857), 7 E. & B. 660; 26 L. J. Q. B. 225; 3 Jur. N. S. 957; 5 W. R. 612; 119 E. R. 1390; *sub nom. R. v. SOUTH EASTERN RY. CO.*, 29 L. T. O. S. 124.

Annotations:—*Reid. Chamberlain v. West End of London & Crystal Palace Ry.* (1862), 2 B. & S. 605; *Horrocks v. Met. Ry.* (1863), 4 B. & S. 315; *R. v. Halifax Corpn. acting as Halifax L. B. of Health* (1866), 14 L. T. 447; *R. v. Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358. *Mentl. Croft v. L. & N. W. Ry.* (1863), 3 B. & S. 436; *R. v. Metropolitan Board of Works* (1863), 3 B. & S. 710; *Re Hayward & Met. Ry.* (1864), 4 B. & S. 787; *Ricket v. Met. Ry.* (1867), L. R. 2 H. L. 175; *Hammer-smith, &c. Ry. v. Brand* (1869), L. R. 4 H. L. 171; *Bucknuch v. Metropolitan Board of Works* (1870), L. R. 5 Exch. 221; *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; *Lyon v. Fishmongers' Co.* (1876), 1 App. Cas. 662.

3411. —.]—COLONIAL BANK OF AUSTRALASIA v. WILLAN, No. 3060, *ante*.

3412. Decision of lower court upon facts—Cannot be impeached.]—R. v. BOLTON, No. 2775, *ante*.

3413. —.]—R. v. RICHARDS (1851), 16 L. T. O. S. 386; 15 J. P. Jo. 64.

3414. —.]—When there is evidence before justices on which they can decide a complaint of assault under 9 Geo. 4, c. 31, s. 27, without deciding a question of interest in land set up by deft. they have jurisdiction so to decide; & this ct. will not interfere when the conviction is brought up by *certiorari*, to be quashed.—*R. v. EDWARDS* (1856), 26 L. T. O. S. 257; 4 W. R. 257; 20 J. P. Jo. 68.

3415. Disqualification of justices—What affidavit must state—Ignorance of disqualification at time of trial.]—An order of justices will not be removed by *certiorari* on the ground of disqualification of some of the justices on the ground of interest, unless the affidavits show distinctly that the objecting party not only did not know of the disqualifying matter at the time of the hearing, but also that he did nothing by way of acquiescing in the jurisdiction.—*Ex p. ILCHESTER PARISH* (1861), 25 J. P. 56.

3416. —.]—W. having applied to the licensing justices for a licence for a new hotel, & the three justices who were sitting having refused it, afterwards applied to the ct. for a mandamus to have the case heard again on the ground that B., one of the justices, was interested as owner in one of the licensed houses near the proposed hotel. The affidavits showed that B.'s wife had succeeded to the licensed house, & was tenant for life, but it was a small house without hotel accommodation, & not likely to be injured by the new licence being granted:—*Held*: (1) a mandamus could not be granted because the decision not having been set aside or quashed on *certiorari* the case could not be heard again; (2) if a *certiorari* were applied for, the affidavits ought to state that the party applying & his solr. did not know at the time that one of the justices was interested.—*R. v. KENT JJ.* (1880), 44 J. P. 298, D. C.

3417. —.]—R. v. WILLIAMS, *Ex p. PHILLIPS*, No. 2488, *ante*.

3418. —Jurisdiction not acquiesced in.]—*Ex p. ILCHESTER PARISH*, No. 3415, *ante*.

3419. —Objection to competency of court taken at hearing.]—R. v. WILLIAMS, *Ex p. PHILLIPS*, No. 2488, *ante*.

3420. Misconduct of jurymen—Affidavit of another member of jury necessary.]—On an application for a rule *nisi* for *certiorari* a solr. swore an affidavit that his client, M., was tried for assault at quarter sessions, & being convicted was sentenced to imprisonment, that during the trial he noticed one of the jurymen was sitting in a huddled position in the back row of the jury box, that he was informed by one of the other eleven jurymen, who was sitting next but one to the jurymen aforesaid, that the latter appeared during the trial to be very tired & sleepy, gave some indication of having taken drink earlier in the day, took no part whatever in the deliberation of the jury, & did not join in the verdict. His informant also stated that in the next case it was found impossible to proceed, the aforesaid jurymen having fallen fast asleep, & only being roused by repeated shakings. The jury did not leave the box between the two cases:—

PART IX. SECT. 9, SUB-SECT. 3.—A. (d) ii.

3405i. Grounds of objection—Must be specified.]—On application for *certiorari*, the grounds of the application must be specially stated.—*R. v. A.-G.*,

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***Ex p. GILLICK, R. v. A.-G.*, *Ex p. ANKETELL* (1885), 11 V. L. R. 508.—AUS.**

3405 ii. —.]—PICTOU CORPN. v. McDONALD (1878), 3 R. & G. 334.—CAN.

3405 iii. —.]—The grounds for *certiorari* must be stated specifically, so that the other party may know the exact points relied on.—*R. v. KAY, Ex p. STEEVES* (1908), 39 N. B. R. 2.—CAN.

Sect. 9.—Procedure: Sub-sect. 3, A. (d) ii. & iii., (e), B., C. & D.]

Held: if the application was to succeed, there should be an affidavit as to the circumstances from one of the other eleven jurymen.—*Ex p. MORRIS* (1907), 72 J. P. 5, D. C.

iii. *As to Service of Notice.*

See, now, C. O. R., r. 21.

3421. Necessity for.]—Affidavit of notice of motion must be given to the Comrs. of Sewers before the Ct. of K. B. will make even a rule to show cause why a *certiorari* should not be granted to remove up an order of theirs.—*R. v. BUTLER* (1733), 2 Barn. K. B. 283; 94 E. R. 502; *sub nom. R. v. SUSSER SEWERS COMRS.*, Sess. Cas. K. B. 64.

3422. —.]—A rule for a *certiorari* to bring up an order of sessions was refused as the proper notices had not been served on the justices.—*R. v. DEVONSHIRE JJ.* (1845), 9 J. P. Jo. 388.

3423. —.]—*R. v. KENT JJ.*, *Ex p. BOULTER* (1895), 40 Sol. Jo. 70, D. C.

3424. —.]—The absence of the affidavit of service required by C. O. R., r. 21, is no ground for discharging the rule *nisi*, as the affidavit may be supplied at any time before the writ is drawn up.—*R. v. NORTHUMBERLAND JJ.*, *Ex p. AMBLE URBAN DISTRICT COUNCIL* (1907), 96 L. T. 700; 71 J. P. 331; 5 L. G. R. 1110, D. C.

Annotation:—R. v. Derbyshire JJ., *Ex p. New Mills, U. C.*, [1909] 1 K. B. 449.

3425. Must identify justices served—With justices making order.]—*R. v. How*, No. 3374, *ante*.

3426. —.]—(1) On motion to quash a *certiorari* removing an order of quarter sessions, it appeared that the writ was granted on affidavit that notice had been served, under 13 Geo. 2, c. 18, s. 5, on B. & F., who were stated in the affidavits to be justices of the district, but were not sworn to have been present when the order was made:—**Held:** the affidavits did not warrant the writ, & the defect was not cured by affidavits exhibited on showing cause, more than six calendar months after the order of sessions, that B. & F. were justices present at the making of the order.

(2) The affidavits in support of a motion for a rule *nisi* to quash the *certiorari* ought not to be intitled in a cause.—*R. v. GILBERDIKE (INHABITANTS)* (1843), 5 Q. B. 207; 13 L. J. M. C. 46; 8 J. P. 40; 8 Jur. 79; 114 E. R. 1227.

3427. —.]—The notice of an intention to sue forth a *certiorari* must be given to the justice or justices, or two of them, if more than one, before whom the proceedings have been. Where, therefore, the affidavit upon which the *certiorari* was obtained merely stated that the notice was given to two justices of the Riding, without stating them to be the justices before whom the proceedings were had:—**Held:** the *certiorari* must be quashed.—*R. v. CARTWELL* (1843), 2 L. T. O. S. 119.

3428. —.]—(1) An affidavit in support of a motion for a *certiorari* stated that notice had been given to J. T. & W. H., two justices of the peace present at the sessions at which the appeal mentioned in the notice came on for hearing:—

Held: this was insufficient, as it did not show that J. T. & W. H. were actually present on the bench when the appeal was heard, as required by 13 Geo. 2, c. 18, s. 5.

(2) *Semble:* an affidavit of notice of application for a *certiorari* purporting to be made by the attorney of the party applying, or his clerk, is sufficient without further proof that such person is such attorney or clerk.—*R. v. WEST RIDING OF YORKSHIRE JJ.* (1844), 1 New Sess. Cas. 406; 4 L. T. O. S. 143; 9 J. P. 838; 9 Jur. 133; *sub nom. R. v. DARTON (INHABITANTS)*, 14 L. J. M. C. 41.

Annotation:—Distl. R. v. Sevenoaks (1845), 1 New Sess. Cas. 505.

3429. —.]—Names of justices served appearing in caption of order.]—*R. v. SEVENOAKS (INHABITANTS)*, No. 2819, *ante*.

3430. —.]—On motion to quash a *certiorari* removing an order of quarter sessions, the affidavit of notice, under 13 Geo. 2, c. 18, s. 5, merely stated that deponent saw at sessions, on a day named, the first day of sessions, the two justices served "then & there acting as justices," etc.:—**Held:** (1) the affidavit was insufficient; (2) the defect was not aided by the caption of the order in which the names of the two justices appeared.—*R. v. St. James Parish, Colchester (INHABITANTS)* (1851), 2 L. M. & P. 314; 4 New Sess. Cas. 680; 20 L. J. M. C. 203; 17 L. T. O. S. 84; 15 J. P. 469; 15 Jur. 467.

3431. Must identify party on whose behalf notice given—With party suing out writ.]—*R. v. How*, No. 3374, *ante*.

3432. When affidavit of service may be made—Subsequent to issue of writ.]—*R. v. St. Mary, Whitechapel (INHABITANTS)*, No. 3347, *ante*.

(e) *Affidavits in Answer.*

3433. Sufficiency of.]—*R. v. LINCOLNSHIRE SEWERS COMRS.* (1733), 2 Barn. K. B. 379; 94 E. R. 566.

3434. No answer that writ complied with—Under certiorari obtained by another.]—*Re DENT COMMUTATION*, No. 2873, *ante*.

B. What Rule granted in First Instance.

See, now, C. O. R., rr. 12, 20.

3435. Rule nisi—Order of Commissioners of Sewers.]—There must be a rule *nisi* in first instance for *certiorari* against Comrs. of Sewers.—*ANON.* (1813), 2 Chit. 137.

3436. —When issued in vacation.]—*R. v. CHIPPING SODRURY (INHABITANTS)*, No. 3342, *ante*.

3437. —Appointment of overseer—Claim of exemption.]—*Re POLLARD* (1852), 16 J. P. Jo. 340.

3438. Rule absolute—Inquisition by public body.]—A rule for a *certiorari* to remove an inquisition taken under order of trustees into the Ct. of K. B., may be absolute in the first instance.—*PERCIVAL v. ROCHDALE TRUSTEES* (1823), 2 L. J. O. S. K. B. 40.

3439. —Order of the commissioner—Similar rule already obtained.]—*Re DENT COMMUTATION*, No. 2873, *ante*.

3440. —Award of inclosure commissioner.]—A rule for a *certiorari* to bring up the award of an

PART IX. SECT. 9, SUB-SECT. 3.—
A. (d) iii.

3435 i. Must identify justices served—With justices making order—But may be amended if time for certiorari not expired.]—The affidavit of service of a notice of motion for a *certiorari* to remove a conviction, must identify the magistrates served as the convicting magistrates. But an affidavit defective in this respect was allowed to

be amended, the time for moving for the *certiorari* not having expired.—*Re LAKE* (1877), 42 U. C. R. 206.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—B.

3435 i. Rule nisi.]—On an application to a judge in chambers for a *certiorari*, there should be a rule *nisi* in the first instance.—*Ex p. HOWELL* (1849), 6

N. B. R. (1 All.) 584.—**CAN.**

3435 i. Rule absolute.]—A judge in chambers may make an order absolute in the first instance for a *certiorari*.—*R. v. CARR* (1869), 6 W. W. & A'B. 240.—**AUS.**

3435 ii. —.]—The judge may make a rule absolute on the first hearing.—*H. v. WONG JOE*, [1918] 3 W. W. R. 581.—**CAN.**

assistant inclosure comr., under Inclosure Act, 1845 (c. 118), s. 44, is a rule absolute in the first instance.—*Re LYMINGE INCLOSURE AWARD, Ex p. KELCEY* (1850), 1 L. M. & P. 55; *sub nom. Ex p. KELSEY*, 19 L. J. Q. B. 145; *sub nom. Ex p. EAST LEIGH* (LORD OF THE MANOR), 14 J. P. Jo. 289.

3441. — Conviction under 5 & 6 Vict. c. 100.]—*R. v. WEST* (1851), 15 J. P. Jo. 337.

3442. — Order of Secretary of State.]—*R. v. SYNEY* (1865), 29 J. P. Jo. 308.

C. Form and Direction of Rule.

See, now, C. O. R., r. 28.

3443. Form of—Must state all orders to be quashed—Order of sessions confirming original order.]—(1) Service of notice of *certiorari* upon two justices sworn to have been present at the hearing of the appeal is sufficient.

(2) An order of sessions, confirming an order of justices, when removed into the ct. by *certiorari*, does not *ex necessitate* bring up the order of justices. The rule should be drawn up for both.—*R. v. CORNWALL JJ.* (1844), 1 New Sess. Cas. 414. 9 Jur. 110; 8 J. P. Jo. 854.

3444. — — — — —.]—*R. v. SKIPTON* (INHABITANTS) (1844), 1 New Sess. Cas. 350; 4 L. T. O. S. 113; 9 J. P. 68.

3445. — Must state all formal objections to order.]—Quarter Sessions Act, 1849 (c. 45), s. 7, which came into operation Nov. 1, 1849, provides that no objection on account of any omission or mistake in an order brought up on return to a *certiorari* shall be allowed, unless such omission or mistake shall have been specified in the rule for the *certiorari*:—*Held*: this provision does not apply to rules obtained before Nov. 1, 1849.

Qu.: whether the effect of this provision is to prevent substantial as well as formal objections to the order being taken unless specified in the rule for the *certiorari*.—*R. v. CROWAN* (1849), 14 Q. B. 221; 4 New Mag. Cas. 13; 3 New Sess. Cas. 663; 19 L. J. M. C. 20; 14 L. T. O. S. 172; 14 J. P. 207; 13 Jur. 1099; 117 E. R. 88.

3446. — — — — —.]—By Quarter Sessions Act, 1849 (c. 45), s. 7, no objection on account of any omission or mistake in any order brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake shall have been specified by the rule for issuing such *certiorari*.—*R. v. PURDEY* (1864), 5 B. & S. 909; 5 New Rep. 76; 34 L. J. M. C. 4; 11 L. T. 309; 29 J. P. 132; 11 Jur. N. S. 153; 13 W. R. 75; 122 E. R. 1069.

Annotations.—*Reid*, *R. v. Kent JJ.*, [1896] 2 Q. B. 1; *R. v. Staffordshire JJ. & Longhurst* (1898), 62 J. P. 741. *Mentl*, *Garnett v. Backhouse* (1868), L. R. 3 Q. B. 699; *R. v. London JJ.*, [1895] 1 Q. B. 616; *R. v. London JJ.* (No. 2) (1895), 39 Sol. Jo. 231; *R. v. London JJ.* (1905), 59 J. P. 820.

3447. Direction of—To clerk of company—Inquisition to assess compensation.]—(1) Where an Act of Parliament for making a railway directed that inquisitions for assessing compensation to the owners of lands required by the co. should be taken

before the sheriff of the county, & that such inquisitions & judgments thereupon should be kept by the clerk of the peace among the records of the county, & be deemed records to all intents, etc.:—*Held*: the rule to show cause why the *certiorari* should not issue, was properly directed to the clerk of the co. although the inquisition was out of their custody.

(2) Where a party has once failed, on account of the insufficiency of his affidavits, to obtain a rule for a *certiorari*, the ct., in the exercise of its discretionary power over proceedings by *certiorari*, will not allow him to renew his application on amended affidavits.—*R. v. MANCHESTER & LEEDS RY. CO.* (1838), 1 Per. & Dav. 164; 1 Will. Woll. & H. 651; 8 L. J. Q. B. 66.

D. Proceedings on the Rule.

3448. Amendment of rule—Whether allowed.]—On rule to show cause, why an assessment of a poor rate should not be returned upon a *certiorari*, it was stated that this assessment was appealed from by one of the inhabitants that were assessed, & court of sessions only made an order relating to that man; for which reason they were not obliged to return upon the *certiorari* anything more than that order, which they had done; & as to the other part of the rate, that the sessions had not meddled with it, & consequently it was no part of their records, nor any act of that ct.:—*Held*: there must be then a new rule made for there going a new *certiorari*.—*R. v. DRAKEMAST* (INHABITANTS) (1731), 2 Barn. K. B. 99; 94 E. R. 381; *subsequent proceedings* (1732), 2 Barn. K. B. 112, 125.

3449. — — — — —.]—*R. v. DOVER CORPN.* (1844), 4 L. T. O. S. 93.

3450. Enlargement of rule—To allow of notice being given.]—*R. v. CUMBERLAND JJ.* (1844), 3 L. T. O. S. 166; 8 J. P. Jo. 408.

3451. — Where settlement possible.]—*R. v. CONGLETON TOWN COUNCIL, Ex p. WILSON* (1847), 11 J. P. Jo. 439.

3452. — To allow of service of rule.]—*R. v. ABINGDON JJ.* (1848), 12 J. P. Jo. 262.

3453. — To enable affidavit to be filed.]—*R. v. DENBIGHSHIRE JJ.* (1853), 17 J. P. Jo. 132.

3454. Rule made absolute—On application of defendants—Upon notice to other side.]—*R. v. HOLYWELL* (INHABITANTS) (1849), 13 J. P. Jo. 313.

3455. — On affidavit of service—Where no cause shown.]—*Re POLLARD* (1852), 16 J. P. Jo. 340.

3456. — After argument—Though no cause shown.]—A rule *nisi* to certain justices had been obtained to show cause why a writ of *certiorari* should not issue to bring up for the purpose of being quashed a conviction of appct., on the ground that it was bad for duplicity. An application was made that the rule might be made absolute as no counsel appeared to show cause.

You must argue the point. The rule *nisi* may have been granted *per incuriam* (AVORY, J.).

PART IX. SECT. 9, SUB-SECT. 3.—C.

a. Form of—How intitled.]—On application for a *certiorari* to remove conviction of one J. B., for selling liquor without licence.—*Held*: (1) the rule *nisi* was properly intitled "In the matter of J. B."; (2) it need not state into which ct. the conviction was to be removed, this being sufficiently shown by the intitling it in the ct. in which the motion was made.—*Re BARRETT* (1869), 28 U. C. R. 559.—CAN.

t. Direction of—Sufficiency.]—The ct. refused to discharge a rule *nisi*

to quash an order for review removed by *certiorari* granted in term under 1899 rules, on objection that it did not direct within what time & upon whom the rule & affidavits upon which it was granted should be served.—*R. v. WILSON, Ex p. BURNS* (1906), 3 E. L. R. 442; 37 N. B. R. 650.—CAN.

PART IX. SECT. 9, SUB-SECT. 3.—D.

3448 i. Amendment of rule—Whether allowed.]—*Ex p. HAMILTON* (1889), 28 N. B. R. 135.—CAN.

a. Enlargement of rule—Short service.]—Where an order *nisi* for a

certiorari had been served only four days before the first day of the term at which it was returnable, the ct. refused to make the rule absolute & enlarged it till next term.—*Ex p. LYONS* (1866), 6 All. 409.—CAN.

3455 i. Rule made absolute—On affidavit of service—Where no cause shown.]—A rule *nisi* to quash a conviction will be made absolute as a matter of course on proof of due service & on production of the writ of *certiorari* with a proper return thereto, if no one appears to show cause.—*R. v. SWEENEY & BOURQUE, Ex p. CORMIER* (1906), 2 E. L. R. 161; 38 N. B. R. 6.—CAN.

Sect. 9.—Procedure: Sub-sect. 3, D., E., F. & G. (a) & (b).]

—*R. v. JONES, Ex p. THOMAS*, [1921] 1 K. B. 632; 90 L. J. K. B. 543; 124 L. T. 668; 85 J. P. 112; 37 T. L. R. 299; 26 Cox, C. C. 706; 19 L. G. R. 354, D. C.

E. Second Application.

3457. First rule inadequate.]—*R. v. DRAKE-MAST (INHABITANTS)*, No. 3448, *ante*.

3458. Where variance can be alleged.]—*DAYREL & THINNS CASE* (1584), 1 Leon. 22; 74 E. R. 20. *Annotation*:—*Mentd. Davies v. Lowndes* (1843), 6 Man. & G. 471.

3459. Return to first writ quashed.]—*ASHLEY'S CASE*, No. 3494, *post*.

3460. —.]—*ARTHUR v. YORKSHIRE SEWERS COMRS.*, No. 2451, *ante*.

3461. Imperfect return to first writ.]—*ANON.* (1733), 2 Barn. K. B. 404; 94 E. R. 582.

3462. — Use of original writ for new return.]—Defts. appealed to sessions against a conviction on a penal statute, where the conviction was affirmed, & afterwards the record was removed here by *certiorari*, where the conviction was quashed for a defect in the information. Prosecutor moved either that the *certiorari* should be sent back to the magistrates, in order that they might return the original information, which had not the defect, or that a mandamus might issue to compel the magistrates to proceed on the original information; but the ct. refused to make such a rule.—*R. v. JUKES* (1800), 8 Term Rep. 625; 101 E. R. 1582. *Annotation*:—*Mentd. R. v. Turk* (1847), 10 Q. B. 540.

3463. — Second writ to complete return.]—*R. v. MORICE*, No. 3352, *ante*.

3464. Refusal of rule on insufficient affidavit—Application on amended affidavits.]—*R. v. MANCHESTER & LEEDS RY. CO.*, No. 3447, *ante*.

3465. First writ quashed on insufficient affidavit—Second application more than six months after.]—*R. v. CARTWORTH (INHABITANTS)*, No. 3348, *ante*.

3466. Error in first writ.]—*R. v. DOVER TOWN COUNCIL* (1844), 8 J. P. Jo. 740.

3467. First writ directed to person unable to comply.]—*Re ST. CUTHBERT'S, CARLISLE OVERSEERS* (1847), 9 L. T. O. S. 251.

F. Recognisances.

See, now, C. O. R., r. 24.

3468. Necessity for—General rule.]—No costs are due on a *certiorari*, removing summary proceedings, unless a recognisance be entered into at the time of removing the proceedings. But it is discretionary in the ct. whether they will grant a *certiorari*; & in future, they will compel the party to enter into a recognisance.—*R. v. JENKINSON* (1785), 1 Term Rep. 85; 99 E. R. 985.

3469. — Application pro rege.]—*R. v. FAREWELL* (1744), 2 Stra. 1209; 93 E. R. 1132.

Annotations:—*Reid. R. v. Boulbee* (1836), 5 L. J. M. C. 57.

PART IX. SECT. 9, SUB-SECT. 3.—E.

b. Where first application refused.]—A motion having been made for a *certiorari* & refused, the ct. declined to hear a second application.—*Ex p. ABELL* (1879), 19 N. B. R. 2.—**CAN.**

c. — Subsequent ex parte application on same material irregular.]—*R. v. McALLAN* (1880), 45 U. C. R. 402.—CAN.****

d. — On preliminary objection.]—When an application for a writ of *certiorari* has been dismissed the ct. will not entertain another application for the same purpose, although first dismissed on a preliminary objection.—*R. v. GREISER* (1903), 9 B. C. R. 503.—**CAN.**

e. — Second application on substantially similar grounds to different judge refused.]—*R. v. MCKAY* (1910), 9 E. L. R. 121.—CAN.****

f. First rule quashed on insufficient affidavit—Application on amended affidavits.]—Where a rule for a *certiorari* is discharged because the affidavits are improperly intitled the application may be renewed on amended affidavits.—*Ex p. BUSTIN* (1851), 7 N. B. R. (2 All.) 211.—**CAN.**

g. —.]—*R. v. PETRIE* (1889), 1 Terr. L. R. 191.—CAN.****

PART IX. SECT. 9, SUB-SECT. 3.—F.

3468i. Necessity for—General rule.]—The ct. or a judge has no jurisdiction

Mentd. R. v. Berkley & Bragge (1754), 1 Keny. 80; *R. v. Cumberland County* (1795), 6 Term Rep. 194; *R. v. Battams* (1801), 1 East, 298.

3470. Who must enter into—Prosecutor—Quarter Sessions Appeal Act, 1731 (c. 19), s. 2.]—The party prosecuting a *certiorari* to remove a conviction must himself enter into a recognisance with other persons to prosecute it with effect by sect. 2 of the above Act.—*R. v. BOUGHNEY* (1791), 4 Term Rep. 281; 100 E. R. 1020.

Annotation:—*Reid. R. v. Abergale* (1836), 5 Ad. & El. 795.

3471. —.]—Where a conviction had been quashed by order of sessions, & the informer obtained a *certiorari* to remove such order:—*Held*: sect. 2 of the above Act did not apply to writs of *certiorari* sued out by a prosecutor, & the ct. would refuse to quash the writ on the ground that no recognisances had been given.—*R. v. SPENCER* (1839), 9 Ad. & El. 485; 8 L. J. M. C. 17; 112 E. R. 1295; *sub nom. Ex p. SPENCER*, 1 Per. & Dav. 358; 2 Will. Woll. & H. 7.

3472. — On behalf of parish—One inhabitant with sureties.]—For obtaining a *certiorari* on behalf of a parish, to remove an order of sessions, a notice to the justices, signed by the attorney for the parish, stating the intention of the parish to apply for such writ, is a sufficient notice by the "party or parties suing forth the same," within 13 Geo. 2, c. 18, s. 5.

The recognisance, under Quarter Sessions Appeal Act, 1731 (c. 19), s. 2, for prosecuting such appeal, must be entered into by one or more of the inhabitants on behalf of themselves & the other parishioners, & also by sureties.

Where a *certiorari* had been allowed on an insufficient recognisance, it being given merely by two persons appearing on the recognisance to be inhabitants of the parish, the ct. refused to quash the *certiorari*, but quashed the allowance, & enlarged the return to the writ, sending the writ back to the sessions in order that it might be duly allowed, after the parties prosecuting the writ should have entered into a proper recognisance.—*R. v. ABERGELE (INHABITANTS)* (1836), 5 Ad. & El. 795; 2 Har. & W. 375; 1 Nev. & P. K. B. 235; Nev. & P. M. C. 66; 7 L. J. M. C. 109; 111 E. R. 1367; *subsequent proceedings* (1838), 8 Ad. & El. 394.

Annotations:—*Consd. R. v. Jones* (1841), 9 Dowl. 504. *Reid. R. v. St. Peter, Droitwich* (1846), 6 L. T. O. S. 354; *R. v. Carew* (1850), 14 J. P. Jo. 464. *Mentd. R. v. St. Mary, Whitechapel JJ. & Overseers* (1843), 7 Jur. 602; *R. v. Allan* (1864), 4 R. & S. 915.

3473. Time for entering into—Whether before issue of writ.]—A rule called on prosecutor of a *certiorari* issued to remove an order of sessions confirming, without appeal, an order of justices, made pursuant to 55 Geo. 3, c. 68, s. 2, for stopping up a footpath, to show cause why it should not be quashed, the recognisances required by Quarter Sessions Appeal Act, 1731 (c. 19), s. 2, not having been entered into, previous to the writ being issued, although they were entered into after the allow-

to entertain a motion to quash a conviction moved up by *certiorari*, unless deft. is shown to have entered into a recognisance with one or more sufficient sureties to prosecute such *certiorari* with effect & pay such costs as may be awarded against him, etc.—*R. v. AH GIN* (1892), 2 B. C. R. 207.—**CAN.**

3468ii. —.]—*R. v. GREISER* (1903), 9 B. C. R. 503.—CAN.****

h. — Or deposit in lieu.]—*Re WESTERN CO-OPERATIVE CONSTRUCTION CO. & BRODSKY* (1905), 15 Man. L. R. 681.—CAN.****

i. Enforcement of.]—*R. v. TOWNSEND* (1907), 43 N. S. R. 1; 13 Can. Crim. Cas. 209.—CAN.****

ance:—*Held*: (1) the statute only applied to cases where there was an appeal to sessions, & not to cases where the order was confirmed without appeal; (2) the application should have been to quash the allowance, & not the writ itself, & the ct. would refuse to mould the rule so as to quash the allowance.—*R. v. JONES* (1841), 9 Dowl. 504.

3474. Service of notice of—"Forthwith."—An order of maintenance was made on Apr. 9, & on Apr. 13 the applt. entered into recognisances, pursuant to Bastardy Act, 1845 (c. 10), s. 3, but the notice was not served on the resp. till June 22. On June 29, resp.'s attorney undertook to admit due service of the notice. At the trial it was objected that the notice of recognisance was not served "forthwith," pursuant to the statute, but the quarter sessions overruled the objection, & quashed the order. The ct. refused a *certiorari* to bring up the order of quarter sessions to be quashed, on the ground that the admission was evidence that the notice had been served in time.—*R. v. GLOUCESTERSHIRE JJ.* (1847), 16 L. J. M. C. 57 11 Jur. 675; 11 J. P. Jo. 69.

3475. Where entry must be made—Entry in wrong county.—*R. v. CAREW* (INHABITANTS) (1850), 14 J. P. Jo. 464.

3476. Sureties—Necessity for.—*R. v. ST. PETER'S, DROITWICH* (INHABITANTS) (1846), 6 L. T. O. S. 354; 10 J. P. Jo. 80.

3477. Amount of bond required.—The Quarter Sessions Appeal Act, 1731 (c. 19), s. 2, requiring the party removing a conviction by a magistrate into the K. B. to enter into a recognisance, with two sureties in £50 conditioned to prosecute the writ with effect is not complied with by the party, & his two sureties, entering into a recognisance in £25 each, but it must be in the entire sum of £50.—*R. v. DUNN* (1799), 8 Term Rep. 217; 101 E. R. 1354.

Annotation:—*Reid*, *Mungean v. Wheatley* (1851), 6 Exch. 88.

3478. On behalf of parish.—*R. v. ABERGELIE* (INHABITANTS), No. 3472, *ante*.

3479. Effect of bankruptcy of one surety.—Where an indictment for conspiracy had been removed by *certiorari*, & upon the trial certain of the defts. were convicted, & before judgment, a motion was made to quash the indictment by reason of its badness, & pending such motion one of the bail of the defts. became insolvent, & tendered a composition to his creditors, the ct. nevertheless refused to grant a rule requiring such defts. to give fresh bail.—*R. v. SHIRLEY* (1843), 1 Dow. & L. 132; 12 L. J. Q. B. 346; 7 J. P. 640; 7 Jur. 1038.

G. The Writ.

(a) Form, Direction and Service of.

3480. Form of—Whether order to be removed must be precisely stated—Effect of variance.—*ANON.* (1696), 1 Salk. 145; 91 E. R. 134.

3481. Similarity of names.—*R. v. BARKING* (INHABITANTS) (1706), 2 Salk. 452; 91 E. R. 391.

PART IX. SECT. 9, SUB-SECT. 3.—G. (a).

3486 i. Direction of—Sufficiency of—To committee of municipal council & town clerk.—*FRABER & BELL v. NEW GLASGOW TOWN* (1880), 1 R. & G. 250.—*CAN.*

3486 ii.—*On a motion to quash a conviction by a justice of the peace which had been appealed to the county judge, an objection that the writ of certiorari was improperly directed to, & returned by the clerk of*

the peace & county attorney, instead of the county judge or magistrate, was overruled.—*R. v. FRAWLEY* (1880), 45 U. C. R. 227.—*CAN.*

3486 iii.—*Direction to parties not having judicial functions to perform—Improper.*—*Re CAMERON'S ASSESSMENT* (1881), 2 R. & G. 177.—*CAN.*

PART IX. SECT. 9, SUB-SECT. 3.—G. (b).

3489 i. Service of writ—Renders subsequent acts void.—*R. v. FOSTER* (1903),

3482. ——— Representatives of inhabitants.]

—A *certiorari* described an order as having been made between the "inhabitants" of two parishes, instead of between the "churchwardens & overseers":—*Held*: there was no variance.—*R. v. ST. OLAVE'S SOUTHWARK* (INHABITANTS) (1844), 5 Q. B. 912; 1 New Mag. Cas. 24; 1 New Sess. Cas. 188; 13 L. J. M. C. 161; 3 L. T. O. S. 81; 8 J. P. 759; 114 E. R. 1492.

3483. ——— Variance in conviction by justices.—*Semble*: a *certiorari*, to remove a conviction "for certain trespasses & contempts against the form of the statute" etc., is sufficient to bring up a conviction for harbouring seamen, being a single offence under the 7 & 8 Vict. c. 112.

The justices having returned the conviction to quarter sessions, & the sessions to Q. R.:—*Held*: the *certiorari* could not then be quashed on the ground of this variance, or because it improperly described the justices as "assigned to hear & determine divers felonies" they being borough justices only.—*R. v. TURK* (1847), 10 Q. B. 540; 16 L. J. M. C. 114; 8 L. T. O. S. 347; 11 Jur. 774; 11 J. P. Jo. 348; 116 E. R. 206.

3484. ——— Certiorari to remove indictment—Will not remove conviction on that indictment.—*R. v. DIXON* (1703), 2 Ld. Raym. 971; 6 Mod. Rep. 61; 1 Salk. 150; 3 Salk. 78; 92 E. R. 147.

Annotations:—*Reid*, *R. v. Nichols* (1742), 13 East, 412, n. *Mentd.* *Garland v. Barton* (1737), Andr. 27.

3485. ——— Need not disclose respondents—Must describe order to be returned.—It is no ground for quashing a writ of *certiorari* for the purpose of bringing up an order of quarter sessions, made upon appeal against an order of justices adjudging the settlement of a pauper, that it does not disclose who were resps., it does enough if it so describes the order that the ct. of quarter sessions can see clearly what is to be returned.—*R. v. SKIPTON* (1841), 1 New Mag. Cas. 57; 3 L. T. O. S. 180.

3486. Direction of—Sufficiency of.—*R. v. JAY* (1708), 11 Mod. Rep. 172; 88 E. R. 969.

3487. Service of—Time for—Before judgment.—*R. v. SFTON* (INHABITANTS), No. 3117, *ante*.

Stage of proceedings at which writ granted, *see* Sect. 8, *ante*.

3488. ——— Necessity for.—*R. v. CHASEMORE*, No. 3398, *ante*.

(b) Effect of Issue of.

3489. Service of writ—Renders subsequent acts void.—The delivery of a *certiorari* to any one justice of session makes every subsequent judicial act erroneous, & every ministerial act void.—*FITZ-WILLIAMS' CASE* (1603), Cro. Eliz. 915; Cro. Jac. 19; Yelv. 32; 78 E. R. 1136.

Annotations:—*Reid*, *Mungean v. Wheatley* (1851), 6 Exch. 88. *Mentd.* *R. v. Wilson* (1835), 3 Ad. & El. 817.

3490. ——— Renders judge liable for contempt.—If a *certiorari* go to remove a record, the judge below is not in contempt for proceeding on the record till service of the writ, but all proceedings upon it after the *certiorari* tested are void (*per cur.*).—*ANON.* (1700), 12 Mod. Rep. 384; 88 E. R. 1396.

23 C. L. T. 228; 5 O. L. R. 624; 2 O. W. R. 312.—*CAN.*

k. Subsequent proceeding void.—Justices at petty sessions convicted resp. of an offence & made an order which was in excess of jurisdiction, & which was quashed on *certiorari*. Resp. was again charged with the same offence:—*Held*: the effect of the writ of *certiorari* was to render the entire order of the justices null & void & to remove it from the record of their proceedings.—*CONLIN v. PATTERSON*, [1915] 2 I. R. 169; 49 I. L. T. 92.—*IR.*

Sect. 9.—Procedure: Sub-sect. 3, G. (b), H. (a) & (b).]

3491. — Stays proceedings.]—R. v. CHASE-MORE, No. 3398, ante.

3492. Proceedings after teste—Void.]—ANON., No. 3480, ante.

3493. Does not stay execution—Begun before issue of writ.]—R. v. NASH (1702), 1 Salk. 147; 91 E. R. 136.

H. The Return.

(a) In General.

3494. By whom made—Persons to whom writ directed.]—Two orders were removed by *certiorari*, but the return was quashed, because the return in the sched. annexed to the writ was not made by two justices, but by the clerk of the peace, who was not the person to whom the *certiorari* was directed, & thereupon a new *certiorari* was granted.—ASHLEY'S CASE (1897), 2 Salk. 479; 91 E. R. 412.

3495. — Direction to two justices—Return by one—Judicial officers.]—On a motion to quash a return to a *certiorari*, directed to two justices of the peace, because it was only made by one, the ct. overruled the exception, because they were judicial officers.—R. v. DARLINGTON (INHABITANTS) (1728), 1 Barn. K. B. 113; 94 E. R. 79.

3496. — Direction to justices of county—Return by justices of borough.]—A *certiorari* issued to remove an order of two justices, was directed to the justices of the county, but returned by the justices of the borough:—*Held*: the writ would be quashed.—ST. PETER'S, BEDFORD v. STEPHENTON PARISH (1729), Sess. Cas. K. B. 92; 93 E. R. 93.

3497. Time for making—Effect of delay—Return 18 months after issue of rule.]—R. v. TOWCESTER (INHABITANTS) (1845), 9 J. P. Jo. 374.

3498. Authentication of—Whether signature of justices necessary.]—ANON., No. 3220, ante.

3498a. —.]—The ct. will order a return to a *certiorari* to be amended, where it is insufficient by reason of the returning officer not having signed it.—R. v. LANCASHIRE JJ. (1827), 5 L. J. O. S. M. C. 131

3499. — Whether sealing necessary.]—A

PART IX. SECT. 9, SUB-SECT. 3.—H. (a).

3495 I. By whom made—Direction to several justices—Return by one or two.]—A return to a writ of *certiorari* made by one or two of several convicting justices, provided they, having the record in their custody, can return it, is a sufficient return.—R. v. LACOUR-SIERE (1892), 8 Man. L. R. 302.—CAN.

1. Time for making—Return day should be mentioned in writ.]—DEVERS v. GAVAZA (1883), 4 R. & G. 167.—CAN.

3499 I. Authentication of—Whether sealing necessary.]—A party appearing to support a conviction cannot object to the cause being proceeded with, because the justice's return to the *certiorari* is not under seal.—R. v. OULTON (1849), 6 N. B. R. (1 All.) 269.

3499 II. —.]—When a *certiorari* was directed to the justice of the peace, & also to the clerk of the peace, & the return was signed by the clerk of the peace, but was not sealed, the ct. sent back the return to be amended.—R. v. MACNAMARA (1832), A.C. & N. 61.—IR.

3499 III. — Effect of want of.]—To a writ of *certiorari* to remove a conviction, the magistrate certified that he

had sent "the transcript of the proceedings against P. G., whereof in the same writ mention is made with all things touching the same to our Lord the King," etc., & he annexed the certificate, the original proceedings, & the conviction to the writ:—*Held*: the return was incomplete, as the certificate did not authenticate the proceedings returned to be the original proceedings & conviction commanded by the writ.—R. v. KAY, *Ex p. GALLAGHER* (1907), 3 E. L. R. 454; 38 N. B. R. 228.—CAN.

m. Form & sufficiency of—Statement by justices that order not in their possession.]—A *certiorari* having issued to bring up the proceedings & order made in the case of an insolvent debtor, the justices stated in the return that the order was not in their possession:—*Held*: the return was insufficient & should be amended, by the justices stating the words or substance of the order, if in their power to do so, or if not, by stating how the original order went out of their possession, or what has become of it, or otherwise.—R. v. VAIL (1861), 10 N. B. R. (5 All.) 166.—CAN.

n. Evidence set out where magistrate had taken no written depositions.]—Where a magistrate, on a summary trial, took no written de-

positions, but the conviction returned to a *certiorari* set out the evidence:—*Held*: in the absence of anything to show that there was any other or different evidence given, that the return must be taken to be a true & full statement.—R. v. FLANNIGAN (1872), 32 U. C. R. 593.—CAN.

o. Bad return—Effect of.]—Where the return to a writ of *certiorari* is bad deft. is obliged to move to quash it on the first available opportunity, & must also prosecute the *certiorari* with effect & without any wilful delay.—R. v. NICHOLS (1892), 24 N. S. R. 151.—CAN.

p. —.]—When the return made to a *certiorari* to remove a cause was bad, the record itself not having been returned:—*Held*: not only the return, but the writ itself ought to be quashed.—OGAN v. FRITTON (1837), 1 Hud. & B. 375.—IR.

q. False return—Remedy for.]—The only remedy for a false return to a *certiorari* is by action on the case at the suit of the aggrieved party, or criminal information.—R. v. ARNOLD (1888), 8 C. L. T. Occ. N. 271.—CAN.

r. —.]—The remedy for a false return to a *certiorari* is action, or information at the instance

return to a *certiorari* need not be under seal.—R. v. PICKERSGILL (1783), Oald. Mag. Cas. 297.

3500. —.]—The seals of the justices of oyer & terminer are not essentially necessary for the removing or authenticating a record transmitted to the Ct. of K. B. The return of the justices to a *certiorari* is a mere ministerial act, which the ct. requires to be authenticated in a particular form, but as it is a form prescribed by no positive law of the land, the ct. which requires it may receive & adopt any other authentic certificate that the record transmitted is the genuine record of the ct. below, & the omission of the particular form can only be objected to by the ct. itself.—ATKINSON v. R. (1785), 3 Bro. Parl. Cas. 517; 1 E. R. 1471, H. L.; *affg.* S. C. *sub nom.* R. v. ATKINSON (1784), 1 Wms. Saund. 249, n.

ions:—*Reid.* R. v. Gregory (1847), 16 L. J. Q. B. 281. *Mentd.* R. v. Holt (1793), 5 Term Rep. 436; R. v. Crossley (1797), 7 Term Rep. 315; R. v. Teal (1809), 11 East, 307; R. v. Carlile (1831), 2 State Tr. N. S. 459; R. v. O'Connell (1844), 5 State Tr. N. S. 1; R. v. Smith O'Brien (1848), 7 State Tr. N. S. 1.

3501. —.]—Where justices, to whom a *certiorari* was directed signed the return without putting their seals to it, or adding their description as justices:—*Held*: the return must be sent back to be amended.—R. v. KENYON (1827), 6 B. & C. 640; 9 Dow. & Ry. K. B. 694; 4 Dow. & Ry. M. C. 476; 5 L. J. O. S. M. C. 160; 108 E. R. 586.

Annotations:—*Consd.* R. v. Glover (1830), 1 B. & Ad. 482. *Reid.* R. v. Kent JJ. (1830), 10 B. & C. 477.

3502. — Description as justices necessary.]—R. v. KENYON, No. 3501, ante.

3503. — Whether particular form required.]—ATKINSON v. R., No. 3500, ante.

3504. Form & sufficiency of—Caption of indictment returned without names of grand jurors.]—A grand jury must not consist of more than twenty-three. If more than twenty-three have been sworn & have found a bill, the ct. will not, on that account, quash the indictment after deft. has removed it by *certiorari*, gone to trial, & been convicted. The caption of the indictment on which deft. had been convicted as above, was drawn up by the clerk of the peace from the minutes of sessions, & returned with the indictment to the Crown Office. It stated the presentment to be made by the oaths of A., C., etc., naming twelve grand jurors, & others, good & lawful men, etc. A rule

was obtained, with a view to a writ of error, calling on the clerk of the peace to show cause why the caption should not be amended by inserting the true names & number of the grand jury sworn. Proof was given by affidavit that the real number exceeded twenty-three & the clerk did not deny this, but stated that he had no minute or recollection of the names or number:—*Held*: the caption was not incorrect in omitting to state the number & all the names of the grand jury, & under the circumstances, no alteration could be made in it, & deft. would receive judgment.—*R. v. MARSH* (1837), 6 Ad. & El. 236; 2 Har. & W. 366; 1 Nev. & P. K. B. 187; Will. Woll. & Dav. 150; 6 L. J. M. C. 153; 1 J. P. 245; 1 Jur. 38; 112 E. R. 89.

Annotation.—*Mentd.* *R. v. Yates* (1883), 48 J. P. 102.

3505. — Articles of the peace returned as exhibited on oath.]—*R. v. DUNN*, No. 2806, *ante*.

3506. Filing of.—Not without affidavit of notice.—When order acquiesced in for a year.]—No return of a *certiorari* to remove orders shall be filed without an affidavit of notice, if the order has been acquiesced under for a year (*PARKER, C.J.*).—*WOOLVERTON PARISH v. SHERBORN ST. JOHN* (1714), Sess. Cas. K. B. 19; 93 E. R. 19.

3507. — Not without rule to show cause.—Return by Commissioners of Sewers.]—When an order of Comrs. of Sewers is removed up by *certiorari*, the ct. will not direct that the return to it shall be filed without making a rule to show cause.—*ANON.* (1732), 2 Barn. K. B. 151; 94 E. R. 415.

(b) Contents of.

3508. Where jurisdiction of Cinque Ports alleged.—Return must state jurisdiction to which appeal lies.]—*Semble*: when a *certiorari* is directed to a Cinque Port, to remove orders a return alleging the privileges of the Cinque Port must show some jurisdiction to which the aggrieved party may appeal.—*WINCHELSEY CINQUE PORT CASE* (1673), 1 Freem. K. B. 99; 89 E. R. 73; *sub nom.* *R. v. WINCHELSEA CORPN.* 2 Lev. 86.

3509. Actual record ordered must be returned.—Exception for records in London.]—Upon a *certiorari* the very record is returned.

It is an error in the clerks in London that upon a *certiorari* they return only a transcript as if the record remained below; for in the Common Bench, though they do not return the very individual record, yet the transcript is returned as if it were the record, & so it is in judgment of law (*HOLT, C.J.*).—*R. v. NORTH* (1697), 2 Salk. 565; 91 E. R. 476.

Annotation.—*Reid.* *Woodcroft v. Kynaston* (1743), 9 Mod. Rep. 305.

3510. — — —.]—Where a *certiorari* goes, the very record itself is to be removed, in all places

except London, where they are only obliged to send up the transcript (*FORTESCUE, J.*).—*ANON.* (1726), 1 Barn. K. B. 5; 94 E. R. 4.

3511. — — —.]—A *certiorari* issued to remove a conviction of deer stealing, the justices returned two affidavits, & a warrant to distrain; & the return was quashed as imperfect.—*R. v. LEVERMORE* (1700), 1 Salk. 146; 91 E. R. 135.

3512. — — —.]—On a *certiorari* to return an order, it was returned, *cujus quidem tenor. sequitur in hæc verba*, & not *qui quidem ordo sequitur in hæc verba*; & it was quashed for this reason.—*R. v. ST. MARY'S PARISH IN DEVICES* (1702), 1 Salk. 147; 91 E. R. 136; *sub nom.* *Re St. MARY'S PARISH IN DEVICES*, 3 Salk. 80.

Annotation.—*Reid.* *Woodcroft v. Kynaston* (1743), 9 Mod. Rep. 305.

3513. — — —.]—A return to a *certiorari*, of orders varying from those described in the writ, is bad.—*HENNINGHAM (INHABITANTS) v. FINCHINGFIELD (INHABITANTS)* (1738), Andr. 72, 208; 95 E. R. 304, 365.

3514. — Return in more formal shape than original conviction.]—The ct. refused a criminal information against a magistrate for returning to a writ of *certiorari* a conviction of a party in another & more formal shape than that in which it was first drawn up, & of which a copy had been delivered to the party convicted by the magistrate's clerk, the conviction returned being warranted by the facts.—*R. v. BARKER* (1800), 1 East, 186; 102 E. R. 73.

Annotations.—*Mentd.* *R. v. Cheshire JJ.* (1833), 2 L. J. M. C. 95; *Chauncy v. Payne* (1841), 1 Q. B. 712.

3515. — Copy insufficient.]—A writ of *certiorari*, for removing proceedings from an inferior into a superior ct., will be quashed on motion for irregularity, in not returning the record itself, but merely setting out a copy thereof.—*PALMER v. FORSYTH* (1825), 4 B. & C. 401; 6 Dow. & Ry. K. B. 497; 3 L. J. O. S. K. B. 260; 107 E. R. 1108.

3516. — — —.]—*ASKEW v. HAYTON*, No. 3157, *ante*.

3517. — — —.]—The ct. will not quash a conviction unless the original record is brought up on the return to the *certiorari*.—*R. v. BRICKHALL* (1864), 12 W. R. 909.

3518. When copy of record sufficient.—Original returned to sessions.]—Upon a *certiorari* to remove a conviction by a justice of the peace under 16 Geo. 3, c. 30, a return that the record is returned to sessions, & that a copy is annexed to the writ, is sufficient.—*R. v. EATON* (1787), 2 Term Rep. 285; 100 E. R. 155.

3519. Whole record ordered must be returned.—Removal of conviction against two.—Return of conviction against one insufficient.]—*Certiorari* to remove a conviction of forcible entry & detainer against A. & his wife. The conviction returned

of the A.—*R. v. NICHOLS* (1892), 24 N. S. R. 151.—CAN.

a. *Whether conclusive*—Where depositions returned differ from evidence given in inferior court.]—Deft. having been convicted for selling liquor without a licence, the depositions returned to the ct. by a convicting magistrate under a *certiorari* showed that there was no evidence of a licence produced before him, while the affidavits filed on the application to quash stated the party had a licence in fact, & produced evidence of it before the magistrate, who, moreover, himself swore that he believed a licence was produced, but it was either not proved or given in evidence:—*Held*: the return to the *certiorari* was conclusive, & that the — could not go behind it.—*R. v.* (1899), 20 O. P. 182.—CAN.

PART IX. SECT. 9. SUB-SECT. 3.—H. (b).

3509 i. Actual record ordered must be returned.—Except when contrary practice prevails.]—When a *certiorari* to remove a cause issues, directed to an inferior ct., the record itself must be returned, & it must be certified that all things touching the same are returned according to the exigency of the writ.—*LYONS* (1827), 1 Hud. & B. 1.—IR.

a. *Whether record can be amended on return.*]—On the return of a *certiorari* the justices are entitled, & may be required, to amend their conviction on matters of form. But it is not open to them, on pretence of amending a conviction, to omit any vital part of what the conviction really contained, nor to introduce any new facts which

are of vital importance to support the conviction.—*HOUGHTON'S CASE* (1877), 1 B. C. R. pt. 1, 89.—CAN.

b. — — —.]—An amended conviction cannot be put in after the return to a writ of *certiorari*.—*R. v. MAC-KENZIE* (1884), 6 O. R. 165.—CAN.

c. — — —.]—The powers of amendment given to the ct. on *certiorari* do not extend to allow it to substitute itself for the magistrate to make a definite conviction when the magistrate has not shown his intention.—*MCTAVISH v. TICE*, [1921] 1 W. W. R. 595.—CAN.

d. — — —.]—Where the conviction is defective in awarding a longer term of imprisonment than the statute permits, the ct. has power to amend the

Sect. 9.—Procedure: Sub-sect. 3, H. (b) & (c), I. & J.]

was against A. only, & for this variance the *certiorari* was quashed.—ANON. (1718), 1 Stra. 116; 93 E. R. 420.

3520. Whether record can be amended on return—After rule obtained.]—*Ex p.* BRADLAUGH, No. 3070, *ante*.

3521. ——— Conviction amended—After filing with clerk of peace.]—*Ex p.* AUSTIN, No. 2884, *ante*.

3522. ——— Before filing with clerk of the peace.]—*Ex p.* KENYON (1881), 45 J. P. 303, D. C.

3523. ——— Quarter Sessions Act, 1849 (c. 45), s. 7.]—*R. v.* WOOD, *Ex p.* FARWELL, No. 2887, *ante*.

3524. Conviction founded on private Act—Act must be returned.]—CARDIFFE BRIDGE CASE, No. 2458, *ante*.

3525. Evidence taken in court below—Not required.]—If a conviction is returned to a *certiorari* the ct. never orders justices upon information to return examinations, except in cases of coroners, where the ct. as supreme coroner of the kingdom, will order a return of the depositions as the ground on which they go.

If justices return falsely or insufficiently an action may lie, but the ct. never obliges them to return to the *certiorari* evidence before them, such as affidavits, or the like.—ANON. (1773), Lofft, 347; 98 E. R. 687.

3526. Coroner's depositions—Required.]—ANON., No. 3525, *ante*.

—.]—*See, further,* CORONERS, Vol. XIII., pp. 256 *et seq.*

(c) Amendment and Enlargement of.

3527. Enlargement of time for—To cure defect in allowance.]—*R. v.* ABERGELE (INHABITANTS), No. 3472, *ante*.

3528. — To enable recognisance to be entered into.]—T. having been convicted of an offence at the instance of the Customs, paid the penalty & costs, & thereupon applied for a rule for a *certiorari* to remove the conviction into this ct. to be quashed, which, upon the argument was made absolute, & the *certiorari* issued; but T., having had to go to sea upon a voyage which would detain him from England for the remainder of the year, was unable to enter into the recognisance required by Quarter Sessions Appeal Act, 1731 (c. 19), s. 2, & so the *certiorari* remained unreturned. Under the circumstances the ct., whilst it could not order a sum equal to the recognisance to be paid into ct. as a substitute, directed the return to the *certiorari* to be enlarged for a twelvemonth.—*Ex p.* TOMLINSON (1869), 20 L. T. 324.

3529. Amendment of—Variation from order.]—Parish officers applied at petty sessions for an order

conviction so as to make it conform to the law.—*R. v.* MCKENZIE (1907), 41 N. S. R. 178.—CAN.

3529 i. — After rule obtained.]—The convicting justices, after service on them of a rule nisi, substituted & brought in on its return a good warrant of commitment in place of that objected to which was admittedly bad for not following the conviction:—*Held:* they were entitled to do so.—*Re PLUNKETT* (1895), 3 B. C. R. 484.—CAN.

3529 ii. — — —.]—*R. v.* WHIFFIN (1901), 3 Terr. L. R. 3.—CAN.

3525 i. Evidence taken in court below—Not required.]—*R. v.* GRAINGER (1881), 46 U. C. R. 382.—CAN.

3525 ii. — — —.]—A writ of *cer-*

tiorari having issued, the magistrate sent up the minutes of the evidence taken before him as part of his return, instead of returning the facts:—*Held:* the evidence being before the ct. might be looked at to determine the question of jurisdiction.—*R. v.* McDONALD (1886), 7 R. & G. 336.—CAN.

PART IX. SECT. 9, SUB-SECT. 3.—H. (c).

a. Amendment of — Unintentional omission of material evidence.]—*Semble:* if material evidence be given before a magistrate, but is unintentionally omitted from a return to a *certiorari*, an amendment may be allowed to supply it, but only with the concurrence of the parties & of the witness by whom the

upon H. for maintenance of a bastard. H. desired a hearing at quarter sessions, & gave recognisances to appear, etc., & pay costs if adjudged the putative father. The quarter sessions dismissed the application, & ordered the parish officers to pay costs to H. The order as returned on *certiorari*, contained a statement of the recognisances, but they were not sent up. The ct. on motion, directed the return to be amended by the recognisances being sent up. The order of sessions, as signed by the clerk of the peace, & served on the parish officers, appeared to be made at quarter sessions holden by adjournment, but did not show the date of the original quarter sessions. When, however, the order was returned to the *certiorari*, the date of the original holding was shown by the caption. The ct. refused to order the return to be amended by making it correspond in the above respect with the order as served.—*R. v.* ARDSLEY (INHABITANTS) (1843), 5 Q. B. 163; 114 E. R. 1210.

3530. — — —.]—A clerk of the peace will not be allowed upon motion to amend his return to a *certiorari*, although he alleges in his affidavit that it will not affect the merits of issue between the appls. & resps.

We see no reason for this novel application. If you choose to take a rule nisi you can do so, but we cannot order or allow an amendment in this form (LORD DENMAN, C.J.).—*R. v.* SMITH (1846), 6 L. T. O. S. 345.

I. Proceedings on and after Removal.

3531. Case put into Crown paper.]—The proper practice upon the return of a *certiorari* to remove a conviction is, that the case should be put into the Crown paper.—*Ex p.* LORD (1846), 4 Dow. & L. 405; 2 New Mag. Cas. 40; 1 Saund. & C. 222; 8 L. T. O. S. 146; *sub nom.* *R. v.* LORD, 16 L. J. M. C. 15; *sub nom.* *Re* LORD, 10 J. P. Jo. 771.

3532. Prisoner cannot plead to conviction.]—A man who is convicted by a justice cannot plead to that conviction when removed into the K. B. by *certiorari*.—*R. v.* BURNABY (1703), 2 Ld. Raym. 900; 1 Com. 131; 1 Salk. 181; 3 Salk. 217; 92 E. R. 100.

Annotations:—Consd. Ex p. Higgins (1843), 10 Jur. 838. *Mend. It. v. Chapman* (1755), Say. 203; *Goldswain's Case* (1778), 2 Wm. Bl. 1207; *Morrell v. Martin* (1841), 3 Man. & G. 581; *Fletcher v. Calthrop* (1845), 9 Jur. 205; *R. v. Cridland* (1857), 7 E. & B. 853.

3533. Whether affidavits against return admissible.]—The ct. will not hear affidavits against a return to a *certiorari* unless to prove corruption in the magistrate, but if the return be false the party may bring an action on the case.—*v.* COWPER (1704), 6 Mod. Rep. 90; 87 E. R. 847.

3534. Whether objections can be raised—After filing the *certiorari*.]—*R. v.* BRANDLING (1711), Fortes. Rep. 254; 92 E. R. 841.

3535. — After removal of order.]—*R. v.* HAT-

deposition was signed in the correctness of the additions; but it cannot be supplied by affidavit.—*R. v.* McNANCY (1871), 6 P. R. 438.—CAN.

PART IX. SECT. 9, SUB-SECT. 3.—I.

3533 i. Whether affidavits against return admissible.]—After the return of a *certiorari*, affidavits may be used to show want of jurisdiction in the justice, when that fact does not appear on the return.—*R. v.* SIMMONS (1872), 1 Pug. 158.—CAN.

3534 i. Whether objections can be raised—After order for *certiorari* obtained.]—When an order for a *certiorari* has been obtained, & no cause shown against it, it is too late to raise a question of jurisdiction after a return has been made to the *certiorari*.—

FIELD PEVEREL (CHURCHWARDENS & OVERSEERS), No. 2726, *ante*.

3536. ———.]—When orders have been returned to a *certiorari*, & their validity is argued on the return, it is too late to urge that the objections to the order were not specified in the rule for a *certiorari*.—*R. v. WINSTER (INHABITANTS)* (1850), 14 Q. B. 344; 4 New Mag. Cas. 90; 4 New Sess. Cas. 116; 19 L. J. M. C. 185; 15 L. T. O. S. 110; 14 J. P. 304; 14 Jur. 744; 117 E. R. 135.

Annotations.—*Mentd. R. v. Green* (1851), 20 L. J. M. C. 168; *R. v. Crediton* (1858), 4 Jur. N. S. 926.

3537. *Effect of death of applicant before hearing.*]—Deft. was convicted for not building party walls according to statute. He brought a *certiorari*, but died before argument.—*Held*: the ct. would go on & affirm the conviction notwithstanding the death.—*R. v. ROBERTS* (1732), 2 Stra. 937; 93 E. R. 953.

Annotation.—*Refd. R. v. Spokes, Ex p. Buckley* (1912), 107 L. T. 290.

3538. ——— *Death of one of two applicants.*]—Where a *certiorari* was granted on the application of two parties & one of them died before the matter came on for argument, the ct. heard the case notwithstanding.—*R. v. NORTH RIDING OF YORKSHIRE JJ.* (1827), as reported in 9 Dow. & Ry. K. B. 204.

J. Application to quash the Writ of Certiorari.

3539. *Grounds for—General rule.*]—The rule for the *certiorari* having been made absolute, & the return thereto having been filed, ought not to stand in the way & prevent our coming at the real justice & merits of the case, for if the *certiorari* issued *improvident* we can order it to be superseded, & the return taken off the file (LORD MANSFIELD, C.J.).—*R. v. WAKEFIELD, No. 2838, ante*.

3540. ——— *That appeal lies.*]—If an order on which appeal lies be removed by *certiorari* before appeal, it ought not to be filed until the ct. is informed of the matter, & then they will grant a *procedendo*, notwithstanding the *certiorari* (HOLT, C.J.).—ANON. (1703), 6 Mod. Rep. 40; 87 E. R. 803.

3541. ———.]—*Certiorari* to remove order of an appointment of overseers of the poor superseded, because it appeared that an appeal was lodged from this order to the sessions, & was still pending & undetermined.—*R. v. WARWICK BOROUGH JJ.* (1734), Cunn. 99; 94 E. R. 1087; *sub nom. WARWICK BOROUGH CASE*, 2 Stra. 991; 1 Bott's Poor Law, 6th ed. 53.

Annotation.—*Refd. R. v. Harman* (1738), Andr. 343.

3542. ———.]—The ct. will feel itself warranted in quashing the writ of *certiorari* for bringing up a case in which provision is made for remitting the appeal to the sessions in a certain event.—*R. v. MARTON-CUM-GRAFTON* (1847), 10 Q. B. 971;

3 New Sess. Cas. 5; 16 L. J. M. C. 159; 11 J. P. 678; 11 Jur. 927; 116 E. R. 368.

Annotation.—*Consd. R. v. Sutton Colfield* (1874), L. R. 9 Q. B. 153.

3543. ——— *Right taken away by statute.*]—*R. v. CASSON, No. 3092, ante*.

3544. ———.]—A claim for compensation having been made to a district board of works, under Metropolis Management Act, 1855 (c. 120), s. 214, for the loss of the office of clerk of the works to certain comrs., the board rejected the claim. Claimant then appealed to the Metropolitan Board of Works, & they, after considering the circumstances, made an order, awarding compensation for the loss of the office. This order was afterwards brought up by *certiorari* to be quashed, on the ground of a want of jurisdiction. The writ had been obtained upon affidavits showing that claimant was not an officer to the comrs. as alleged, & that the district board had rejected the claim on that ground. Upon cause being shown against the rule to quash the order.—*Held*: the question of whether pltf. was an officer or not was necessarily within the appellate jurisdiction of the Metropolitan Board, & the *certiorari* therefore had *improvidently* issued.—*R. v. ST. OLAVE'S DISTRICT BOARD* (1857), 8 E. & B. 529; 21 J. P. Jo. 756; 120 E. R. 198; *sub nom. R. v. METROPOLITAN BOARD OF WORKS*, 27 L. J. Q. B. 5; 30 L. T. O. S. 132; 4 Jur. N. S. 25; 6 W. R. 57.

Annotations.—*Refd. Colonial Bank of Australasia v. Willan* (1874), L. R. 5 P. C. 417. *Mentd. R. v. Woodhouse*, [1906] 2 K. B. 501.

As to statutory restrictions on *certiorari*, see Sect. 7, *ante*.

3545. ——— *Issue upon insufficient grounds—Directing return of tenor of record instead of record.*]—Writ of *certiorari* to the Ct. of Great Sessions in Wales quashed, it having issued without a special ground laid for it, & directing the tenor of the record, instead of the record itself, to be returned.—*PIERCE v. THOMAS* (1821), Jac. 54; 37 E. R. 770, L. O.

Annotation.—*Consd. Worthington v. Remnant* (1840), 10 Slim. 558.

3546. ——— *Issue without judge's fiat—Fiat obtained subsequently.*]—*R. v. ST. MARY, WHITE-CHAPEL (INHABITANTS)*, No. 3347, *ante*.

3547. ——— *Order not set out in writ—No statement that order in writing.*]—Where a *certiorari* had issued to bring up an order under Parochial Assessments Act, 1836 (c. 96), s. 6, & neither the order itself nor a copy was returned, the ct. quashed the writ, as it neither set out the order nor stated that it was in writing.—*R. v. WIGAN JJ.* (1844), 3 L. T. O. S. 207; 8 J. P. 677; 8 Jur. 930.

3548. ——— *Material variance between writ & return.*]—Where a material variance between the writ of *certiorari* & the return becomes known to

NORTH DUBLIN UNION GUARDIANS v. SCOTT (1850), 1 I. C. L. R. 76; 2 Ir. Jur. 246.—IR.

1. *Return—Whether rule to take return off file necessary.*]—Where proceedings have been removed by *certiorari* & affirmed, it is not necessary to take out a rule to take the return off file before applying for a *procedendo*, it being sufficient that leave has been granted to remove the return from the files.—*R. v. WHITE* (1886), 35 N. B. R. 483.—CAN.

PART IX. SECT. 9, SUB-SECT. 3.—J.

g. *Grounds for—Irregularity of recognisance.*]—An objection that a recognisance is irregular is ground for a motion to quash *certiorari*.—*R. v. HOGGARD* (1870), 30 U. C. R. 152.—CAN.

h. ———.]—*R. v. CLUFF* (1882), 46 U. C. R. 565.—CAN.

k. ——— *That writ too late.*]—Objection that a writ of *certiorari* was too late, should be taken on a substantive motion to quash the writ.—*Re BISHOP DYKE* (1887), 20 N. S. R. 263; 8 C. L. T. 446.—CAN.

l. ———.]—*R. v. PORTER* (1888), 20 N. S. R. (8 R. & G.) 352; 9 C. L. T. 57.—CAN.

m. ——— *Indorsement of writ irregular.*]—An order was granted by a judge & the writ indorsed by a comr., who was directed in the order to indorse upon the writ the amount for which bail was filed, etc.—*Held*: the judge had no power to order a comr. to indorse the writ, & it was quashed.—*DENNISON v. JACK* (1881), 2 R. & G. 170; 1 C. L. T. 663.—CAN.

n. ——— *Improvident issue.*]—If a *certiorari* *improvidently* issue to remove an interpleader, the application should be to quash the *certiorari*, & not for a *procedendo*.—*JONES v. HARRIS* (1860), 6 U. C. L. J. O. S. 16.—CAN.

3540 l. ——— *That appeal lies.*]—It is no objection to a writ of *certiorari* that an appeal also would lie.—*TUFFER v. MURPHY* (1882), 3 R. & G. 173.—CAN.

3545 l. ——— *Issue upon insufficient grounds.*]—*Re BANK OF NOVA SCOTIA (ASSESSMENT OF)* (1878), 12 N. S. R. (3 R. & C.) 32.—CAN.

3548 l. ——— *Material variance between writ & return.*]—The return made to a *certiorari* to remove a cause being bad, the record itself not having been returned.—*Held*: not only the return, but the writ itself ought to be quashed.

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the ct. incidentally, prior to the argument upon a rule to quash the *certiorari*, & return, they will take notice of it, & make the rule absolute.—*R. v. APPLEBY (INHABITANTS)* (1845), 5 L. T. O. S. 71; 9 J. P. 88.

3540. — Misdescription of conviction in writ—Application after writ obeyed & conviction returned.]—*R. v. TURK*, No. 3483, *ante*.

3550. — Untrue statements in affidavits—As to service of notice on justices.]—When a whole term has elapsed after a case, granted by an order of quarter sessions, has been brought up by *certiorari*, it is too late to quash the *certiorari*, on the ground that although the affidavits on which the *certiorari* was obtained alleged service of notice on two justices present at the time of the making of the order, one of those justices was, in fact, not then present.—*R. v. BASINGSTOKE (INHABITANTS)* (1849), 3 New Sess. Cas. 693; 19 L. J. M. C. 28; 14 L. T. O. S. 206.

Defective affidavit—Omission of words “before me” in jurat.]—See No. 3400, *ante*, No. 3552, *post*.

Improper service of writ.]—See No. 3117, *ante*.

3551. Time for—Prompt application—Not after lapse of term after case granted—On ground of insufficiency of service of notice on justices.]—*R. v. BASINGSTOKE (INHABITANTS)*, No. 3550, *ante*.

3552. — Application several months after issue of writ—Substantial defect in jurat of affidavit.]—On motion to quash a writ of *certiorari quia improvide emanavit* it appeared that the *jurat* of the affidavit on which it was granted & which was sworn before a comr. omitted the words “before me.” The affidavit referred to a notice annexed at the foot of which was written “this is the notice referred to in the affidavit sworn before me this 13 day of Feb. 1844, W. M.”, etc.:—*Held*: this was a fatal defect & could not be cured by reference to the annexed document or waived by the lapse of several months between the time of the writ of *certiorari* being granted & the present application.—*R. v. BLOXHAM (INHABITANTS)* (1844), 6 Q. B. 528; 2 Dow. & L. 168; 1 New Pract. Cas. 76; 1 New Mag. Cas. 123; 1 New Sess. Cas. 370; 14 L. J. Q. B. 13; 4 L. T. O. S. 132 a; 9 J. P. 101; 8 Jur. 1117; 115 E. R. 197.

Annotations:—*Mentd.* *Empey v. King* (1844), 1 New Pract. Cas. 174; *R. v. Norbury* (1846), 6 Q. B. 534, n.; *R. v. Ratcliffe Culey* (1846), 9 Q. B. 18; *Graham v. Ingleby* (1848), 1 Exch. 651.

3553. Acceleration of hearing—To enable defendant to bring action.]—The ct. will be disposed to advance in the Crown paper a rule *nisi* for quashing a *certiorari* when the object is to bring an action, & it is probable that the six months, limited by Justices Protection Act, 1848 (c. 44), s. 8, will expire before the argument on the rule, if it keeps its place, can be heard, but the application must be made promptly.—*R. v. BARTON* (1849), 13 J. P. 56.

3554. Affidavits—How intitled.]—Affidavits in support of an application to quash a *certiorari* bringing up an order of justices must be intitled

in the names of the parties in the proceeding & not merely “In the Q. B.”—*R. v. JONES* (1839), 8 Dow. 80; 4 Jur. 365.

Annotation:—*Mentd.* *R. v. Chasemore* (1847), 12 Jur. 11.

3555. ——*R. v. GILBERDIKE (INHABITANTS)*, No. 3426, *ante*.

In support of application for certiorari to quash.]—See Sub-sect. 3, A. (d), *ante*.

In support of application for certiorari to remove for trial—In civil cases.]—See Nos. 3139–3142, *ante*.

In criminal cases.]—See Sub-sect. 2, A. (b), *ante*.

In support of certiorari to remove depositions for bail.]—See Nos. 3629, 3630, *post*.

K. Quashing Indictments, Orders and Convictions brought up.

3556. General rule—Court will not regard extraneous facts.]—The ct. will not look to any special statement of facts in the *certiorari*, to determine a conviction to be illegal.

We cannot take notice of any fact which does not appear on the face of the conviction itself, on the validity of which we are called upon to decide. It must either stand or fall on its own merits, & we cannot take in aid any extraneous information to support or quash it (*per cur.*)—*R. v. LISTON* (1793), 5 Term Rep. 338; Nolan, 259; 101 E. R. 189.

Annotations:—*Fold.* *R. v. Cashibury Hundred JJ.* (1823), 3 Dow. & Ry. K. B. 35. *Mentd.* *R. v. Tuddenham* (1841), 9 Dow. 937.

3557. On application of prosecutor—Upon terms.]—*R. v. WEBB* (1764), 3 Burr. 1468; 1 Wm. Bl. 460; 97 E. R. 931.

Annotation:—*Reid.* *R. v. Glenn* (1820), 3 B. & Ald. 373.

3558. — Time allowed to prefer second indictment.]—*R. v. WYNN* (1802), 2 East, 226; 102 E. R. 555.

3559. — Prosecutor to pay costs.]—*R. v. GLENN* (1820), 3 B. & Ald. 373; 106 E. R. 699.

As to costs on certiorari to quash, see Sub-sect. 3, N., *post*.

3560. Whether order quashed in part—Order divisible.]—This ct., in the exercise of its appellate jurisdiction over the orders of justices, will, if an order defective in part be removed here by *certiorari*, quash it only so far as it relates to the bad part, if that can be separated from the portion which is good (DALE, J.).—*Ex p. COLEY* (1851), 4 New Sess. Cas. 507; 16 L. T. O. S. 419; 15 J. P. 420; 15 Jur. 128; *sub nom.* *R. v. GREEN*, 20 L. J. M. C. 168.

Annotation:—*Fold.* *Re St. Giles-in-the-Fields & St. George, Bloomsbury (United Parishes of) & Poor-Law Board* (1851), 15 J. P. 658.

3561. ——*After a rule had been made absolute for the issue of a writ of certiorari to remove into the Ct. of Q. B., in order that it might be quashed, a certain order of the poor law board, but before the writ was served, the poor law board issued another order rescinding so much of the order as had been pronounced illegal by the Ct. of Q. B. when it made absolute the rule nisi for the writ. Notice of the rescinding order was given to the party moving for the writ before the*

COGAN v. FITTON (1827), 1 Hud. & B. 375.—IR.

c. — Misdescription of applicant in writ.]—Where the Christian name of apprt. is misstated in the writ, it will be quashed.—*R. v. WATERS* (1866), 6 All. 409.—CAN.

3552 i. Time for—Laches in moving to quash writ.]—Six years having elapsed before motion, a rule absolute was

granted to quash a *certiorari*.—*HALIFAX CITY v. HARTLAND* (1881), 2 R. & G. 116.—CAN.

p. Where remedy by appeal—Unless for cause arising after order appealed from.]—Since the passing of Crown Rules, 1889, the ct. will not entertain a motion to rescind an order for *certiorari*, except by way of appeal, when an appeal is provided, nor to quash a writ of *certiorari* unless for

cause which has arisen since the order was granted.—*R. v. FRASER* (1901), 22 N. S. R. 502.—CAN.

q. Who may hear—Whether judge at chambers.]—A judge at chambers has no power to make a rule *nisi* to quash a writ of *certiorari* returnable before the ct. on circuit.—*ELLIOTT v. McDONALD* (1882), 3 R. & G. 283.—CAN.

writ was served, & affidavit in answer to a rule nisi for quashing the order after it had been removed in obedience to the writ showed the rescission of the illegal part, the date of the order by which that rescission was effected, & the fact that notice of the rescission had been given before the service of the writ:—*Held*: it was competent to the poor law board, notwithstanding the rule for the writ to rescind the illegal part of the original order, such act of rescission was a proper & convenient proceeding by that board, & the order was divisible, & might be quashed in part by the ct.—*R. v. ROBINSON* (1851), 17 Q. B. 466; 117 E. R. 1361; *sub nom. Re St. GILES-IN-THE-FIELDS & ST. GEORGE, BLOOMSBURY (UNITED PARISHES OF) & POOR-LAW BOARD*, 15 J. P. 658; *sub nom. R. v. POOR-LAW COMRS., Re St. GILES-IN-THE-FIELDS & ST. GEORGE, BLOOMSBURY (UNITED PARISHES OF)*, 15 Jur. 841.

3562. — Estimate containing illegal items.]—*Re ROCHESTER TOWN COUNCIL* (1858), 22 J. P. 178.

3563. Whether right to have whole record quashed.—Inquisition founded on void conviction.]—At the time of his conviction for unlawful detainer deft. tendered to the justices a traverse of the force complained of, & a few days after, an inquisition was held before the magistrates for the purpose of trying the alleged force by a jury, who, after hearing evidence adduced by both parties, found the deft. guilty, & the magistrates then gave restitution. A return was made to the ct., on *certiorari*, of the conviction & inquisition. The latter was entitled an inquisition indented & taken by the oaths of twelve before, etc., who say, upon their oaths that, etc., stating an unlawful entry & detainer, but not reciting any complaint made by prosecutors:—*Held*: (1) the inquisition was founded on the conviction, & could not be sustained, the conviction being void, & the inquisition, even if looked at alone, was bad, as it did not state any complaint, nor by what authority the jury was summoned. (2) The ct. was bound to award a re-restitution, as a consequence of quashing the conviction, without inquiring into the legal or equitable claims of the respective parties.

(3) The proceedings being returned by *certiorari*, & the conviction being, upon a *concilium* & argument, pronounced bad, the ct. would not, as a consequence of that judgment, quash the inquisition also, but heard its validity separately discussed on motion.—*R. v. WILSON* (1835), 3 Ad. & El. 817; 1 Har. & W. 387; 5 Nev. & M. K. B. 164; 3 Nev. & M. M. C. 233; 4 L. J. M. C. 114; 111 E. R. 624.

Annotations:—*Generally*, *Mentd. R. v. Harland* (1838), 8 Ad. & El. 826; *Attwood v. Jolliffe* (1848), 3 New Sess. Cas. 116.

3564. — Licence partly illegal.]—*Semble*: that part of a licence cannot be quashed upon *certiorari* without quashing the whole.—*R. v. MANN* (1873), L. R. 8 Q. B. 235; 21 W. R. 329; *sub nom. R. v. EXETER JJ.*, 42 L. J. M. C. 35; 27 L. T. 847; 37 J. P. 212.

Annotations:—*Mentd. Igoe v. Shann*, [1902] 2 K. B. 467; *R. v. Woodhouse*, [1906] 2 K. B. 501.

3565. — Illegal order confirming order of justices.—Order of justices not quashed.]—Where an order of a ct. of quarter sessions confirming an order of petty sessions is brought up to be quashed on *certiorari*, & is quashed, upon the ground that the ct. of quarter sessions was improperly constituted, & not upon the merits of the case, & no application is made to bring up or quash the order

of petty sessions also, the order of petty sessions remains in force.—*SUFFOLK COUNTY LUNATIC ASYLUM v. STOW UNION GUARDIANS* (1897), 76 L. T. 495; 61 J. P. 328; 45 W. R. 620; 41 Sol. Jo. 509, D. C.

Annotations:—*Mentd. Suffolk County Lunatic Asylum Visiting Committee v. Nottingham Union Grdns.* (1905), 69 J. P. 120; *Glamorgan County Asylum Visitors Committee v. Cardiff Grdns.*, [1911] 1 K. B. 437.

3566. — Illegal conviction & order affirming conviction.]—A summons issued by justices was served on applt.'s clerk at the lock-up shop of applt.:—*Held*: (1) the service was bad, as the shop was not his "place of abode" within the meaning of Summary Jurisdiction Act, 1848 (c. 43), s. 1, & the conviction of applt. must be quashed; (2) the order affirming the conviction, made by the recorder at quarter sessions, against whom a rule had been obtained, must also be quashed, as applt. had a right to have the whole record quashed.—*R. v. RHODES, Ex p. McVITTIE, R. v. MULLIN, Ex p. McVITTIE* (1915), 85 L. J. K. B. 830; 113 L. T. 1007; 79 J. P. 527; 25 Cox, C. C. 212, D. C.

Annotations:—*As to* (1) *Reid. R. v. Braithwaite*, [1918] 2 K. B. 319. *Generally*, *Mentd. McVittie v. Marsden* (1917), 116 L. T. 629.

3567. True recital of commitment presumed.—defendant but not from prosecutor.]—Where the *certiorari* is taken away from deft., but not from prosecutor, the ct. will assume that the warrant of commitment contains a true recital of the conviction, unless it is brought before the ct. by prosecutor, though the recital shows the conviction to be bad.—*Re REYNOLDS* (1844), 1 Dow. & L. 846; *sub nom. R. v. REYNOLDS & HODGSON*, 13 L. J. M. C. 65.

Annotation:—*Mentd. Re Dunn* (1847), 5 C. B. 215.

As to statutory restrictions on issue of writ, see Sect. 7, *ante*.

L. Enforcement of Obedience—Attachment.

As to attachment & committal, see, generally, CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL, pp. 46 *et seq.*, *ante*.

3568. When court will enforce by attachment.—Not before delivery of writ.]—*ANON.*, No. 3490, *ante*.

3569. — Enforcing order of justices by distress.]—Motion for an attachment against an officer for executing by distress an order of justices after the order had been removed by *certiorari*.

To bring one into contempt the distress must have been after the *certiorari* presented below, & if the warrant had been delivered before that time the way would be upon producing the *certiorari* to get a *supersedeas* of it, & deliver it to the officer, or else he could not be in contempt (*HOLT, C.J.*).—*ANON.* (1701), 12 Mod. Rep. 499; 88 E. R. 1475.

3570. — Proceeding after delivery of writ.]—*R. v. CARLISLE CORPN.* (1702), 7 Mod. Rep. 38; 87 E. R. 1079.

3571. — Commissioners of Sewers imposing fine.]—An attachment lies against Comrs. of Sewers for imposing a fine after a *certiorari* delivered.—*SMITH, LLUELLYN, ETC. (COMRS. OF SEWERS) CASE* (1670), 1 Mod. Rep. 44; 1 Vent. 66; 86 E. R. 719; *sub nom. R. v. SMITH, ETC. (COMRS. OF SEWERS)*, 1 Lev. 288; *sub nom. R. v. LLUELLYN, SMYTH, ETC. (COMRS. OF SEWERS)*, 2 Keb. 635; *sub nom. ANON.*, T. Raym. 186.

Annotation:—*Mentd. Parker v. Kett* (1701), 1 Sal. 95.

3572. — Not where conviction sent to

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3570 L. When court will enforce by attachment.—Proceeding after delivery of

writ.]—If the person to whom the writ issues declines returning or obeying the writ for reasons which the ct. think insufficient a rule nisi for attachment

will therefore be granted.—*Re OLYDE COAL & MINING CO.* (1870), 8 N. S. R. 56.—*CAN.*

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appeal.]—R. v. NEW WINDSOR (RECORDER & JJ.) (1857), 30 L. T. O. S. 119; 21 J. P. 740.

M. Appeals from Decision of High Court.

See Judicature Act, 1873 (c. 66), ss. 19, 47.

3573. Not in "criminal cause or matter" — Refusal to quash conviction by justices.]—Where the Q. B. Div. discharges a rule for *certiorari* to bring up a conviction of justices to be quashed, there is no appeal to the Ct. of Appeal under Jud. Act, 1873 (c. 66).—*R. v. FLETCHER* (1876), 2 Q. B. D. 43; 46 L. J. M. C. 4; 35 L. T. 538; 41 J. P. 310; 25 W. R. 149; 13 Cox, C. C. 358, C. A.

Annotations.—*Apld.* *Blake v. Beech* (1877), 2 Ex. D. 335. *Consd.* *R. v. Garrett, Ex p. Sharf*, [1917] 2 K. B. 99. *Reftd.* *Ex p. Schofield*, [1891] 2 Q. B. 428; *R. v. Marlborough Street Police Magistrate, Ex p. Samuel* (1919), 63 Sol. Jo. 300; *Re Clifford & O'Sullivan*, [1921] 2 A. C. 570. *Mentd.* *Yates v. R.* (1885), 52 L. T. 305; *Ex p. Woodhall* (1888), 20 Q. B. D. 832; *R. v. Young, etc.*, London County J.J. (1891), 61 L. J. M. C. 42; *Seaman v. Burley*, [1898] 2 Q. B. 344; *R. v. Brixton Prison, Ex p. Savarkar*, [1910] 2 K. B. 1056; *Scott v. Scott*, [1912] P. 241; *R. v. Manchester Local Profiteering Committee, Ex p. L. & Y. Ry.* (1920), 89 L. J. K. B. 1089.

3574. — Order of justices to abate nuisance—Under Public Health Act, 1875 (c. 55), s. 96.]—Deft. having failed to comply with a notice under sect. 94 of the above Act requiring abatement of a nuisance, was summoned before justices, who made an order under sect. 96 for the abatement of the nuisance & ordered deft. to construct a particular kind of closet. A Div. Ct. made absolute a rule for a *certiorari* to bring up & quash this order on the ground that the Act gave no power to the justices to order the construction of the closet. The justices having appealed:—*Held*: the case was a "criminal cause or matter" within the meaning of Jud. Act, 1873 (c. 66), s. 47, & therefore no appeal lay.—*R. v. WHITCHURCH* (1881), 7 Q. B. D. 534; *sub nom. Re NOTTINGHAM JUSTICES' ORDER, Ex p. WHITCHURCH*, 50 L. J. M. C. 99; 45 L. T. 379; 46 J. P. 134; 29 W. R. 922, C. A.

Annotations.—*Consd.* *Rook v. Schofield* (1891), 64 L. T. 780. *Reftd.* *R. v. Central Criminal Court JJ.* (1886), 18 Q. B. D. 314; *Wiffen v. Bailey & Romford U. C.* (1915) 1 K. B. 600. *Mentd.* *Ex p. Saunders* (1883), 11 Q. B. D. 191; *R. v. Llewellyn* (1884), 13 Q. B. D. 681; *A.-G. v. Bradlaugh* (1885), 14 Q. B. D. 687; *R. v. Kent JJ.* (1885), 1 T. L. R. 539; *Whitaker v. Derby Urban S. A.* (1885), 55 L. J. M. C. 8; *Loughborough Highway Board v. Curzon* (1886), 2 T. L. R. 678; *R. v. Tyler & International Commercial Co.* (1891) 2 Q. B. 588; *Seaman v. Burley*, [1898] 2 Q. B. 344; *Derby Corp'n v. Derbyshire County Council*, [1897] A. C. 550; *Southport Corp'n v. Birkdale U. D. C.* (1897), 76 L. T. 318; *R. v. Manchester Local Profiteering Committee, Ex p. L. & Y. Ry.* (1920), 89 L. J. K. B. 1089.

3575. — Order for restitution of property—Under Larceny Act, 1861 (c. 96), s. 100.]—Prisoner was convicted of obtaining goods by false pretences. After so obtaining the goods he had delivered them to commission agents for sale, & the agents, having made advances to prisoner upon the goods, sold them, & were in possession of the proceeds. After the conviction of the prisoner the ct. under the above Act ordered the agents to pay to the owner of the goods the whole of the proceeds, deducting only expenses of sale:—*Held*: there was jurisdiction to make the order, & it could not be questioned by *certiorari*. An order of the Q. B. Div. discharging a rule *nisi* for a *certiorari* to bring up an order for restitution of property made under the above Act, is a judgment in a "criminal cause or

matter within" Jud. Act, 1873 (c. 66), s. 47, & no appeal lies to the Ct. of Appeal.—R. v. CENTRAL CRIMINAL COURT JJ. (1886), 18 Q. B. D. 314; 56 L. J. M. C. 25; 56 L. T. 352; 51 J. P. 229; 35 W. R. 243; 16 Cox, C. C. 196, C. A.

3576. — Order to pay costs of abandoned appeal to quarter sessions—Wilful damage & trespass.]—Where notice of appeal to quarter sessions against a summary conviction for wilful damage & trespass having been given, but the appeal not being prosecuted, the sessions made an order for payment of costs against the party, who had given the notice under Quarter Sessions Act, 1849 (c. 45), s. 6, & an application for a *certiorari* to bring up the order so made had been refused by a Div. Ct.:—*Held*: the order for costs being one made in a "criminal cause or matter," no appeal lay to the Ct. of Appeal against the decision of the Div. Ct.—*R. v. WILTSHIRE JJ., Ex p. JAY*, [1912] 1 K. B. 566; 81 L. J. K. B. 518; 106 L. T. 364; 76 J. P. 169; 28 T. L. R. 255; 56 Sol. Jo. 343; 22 Cox, C. C. 787; 10 L. G. R. 353, C. A.

Annotations.—*Apld.* *R. v. Marlborough Street Police Magistrate, Ex p. Samuel* (1919), 63 Sol. Jo. 300. *Mentd.* *R. v. Garrett, Ex p. Sharf*, [1917] 2 K. B. 99; *Re Clifford & O'Sullivan*, [1921] 2 A. C. 570.

3577. — Conviction for breach of regulations—For management of Royal park.]—The decision of the Div. Ct. refusing an *ex p.* motion to grant a rule *nisi* for a writ of *certiorari* to quash a conviction by magistrates for the breach of regulations made for the management of a Royal park is a decision in a "criminal cause or matter," & is therefore final.—*R. v. MARLBOROUGH STREET POLICE MAGISTRATE, Ex p. SAMUEL* (1919), 63 Sol. Jo. 300, C. A.

3578. Civil proceedings—Discharging rule for quashing order of sessions—Validity of parochial rate.]—A decision of the Q. B. on questions relating to the validity of parochial rates though given in the form of discharging a rule for quashing an order of sessions, is an "order" within the Jud. Act, 1873 (c. 66), s. 19, & is therefore subject to appeal.—WALSALL OVERSEERS v. LONDON & NORTH WESTERN RY. CO. (1878), 4 App. Cas. 30; 48 L. J. M. C. 65; 39 L. T. 453; 43 J. P. 108; 27 W. R. 189, H. L.; *revers. S. C. sub nom. R. v. WALSALL OVERSEERS*, 3 Q. B. D. 457, C. A.

Annotations.—*Distd.* *R. v. Swindon New Town L. B.* (1880), 49 L. J. Q. B. 522. *Apld.* *Peterborough Corp'n v. Willsthorpe Parish & Stamford Union Assmt. Com.* (1883), 53 L. J. M. C. 33; *Illingworth v. Bulmer East Highway Board* (1884), 53 L. J. M. C. 60. *Consd.* *Ex p. Kent County Council & Dover Council, Ex p. Kent County Council & Sandwich Council*, [1891] 1 Q. B. 725; *Kydd v. Liverpool Watch Committee*, [1907] 2 K. B. 591. *Apld.* *Re Jude's Musical Compositions*, [1907] 1 Ch. 651. *Consd.* *R. v. Nat Bell Liquors*, [1922] 2 A. C. 128. *Reftd.* *Shubbrook v. Tufnell* (1882), 30 W. R. 740; *Holborn Grdns. v. Chertsey Grdns.* (1885), 15 Q. B. D. 76; *Barnardo v. Ford, Gossage's Case*, [1892] A. C. 326; *Re Knight & Tabernacle Permanent Bldg. Soc.* (1892), 41 W. R. 35; *Lodge v. Huddersfield Corp'n* (1898), 62 J. P. 515; *R. v. Southampton Licensing JJ., Ex p. Cardy*, [1906] 1 K. B. 446. *Mentd.* *Monmouth Corp'n & Monmouth Churchwardens, etc.* (1878), 38 L. T. 612; *R. v. Bridgnorth Grdns.* (1883), 11 Q. B. D. 314; *Cox v. Hakes* (1890), 15 App. Cas. 506; *Re Carpenter, etc. & Bristol Corp'n* (1907), 71 J. P. 417.

3579. Leave to appeal—Whether necessary—Order discharging rule to show cause.]—An appeal from an order of the Q. B. Div. discharging a rule for a *certiorari* to bring up an order of justices in petty sessions is not an appeal from an inferior ct. within Jud. Act, 1873 (c. 66), s. 45, & no

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r. Not in "criminal cause or matter"—Marine inquiry.]—Proceedings under Marine Act are criminal proceedings, & no appeal will lie to the full court from the decision of a Judge

granting *certiorari* to have such proceedings quashed.—Re MEDLEY (1902), 28 V. L. R. 475.—AUS.

s. — Conviction for non-indictable offence.]—R. v. NAT BELL LIQUORS, LTD., [1922] 2 A. C. 128, P. C.—CAN.

t. Notice of—Service.]—Notice of appeal from an order dismissing an application for *certiorari* was served upon the solr. who acted for the prosecutor in the proceedings:—*Held*: good.—R. v. FERGUSON (1894), 28 N. S. R. 154.—CAN.

leave to appeal is required.—*R. v. PEMBERTON, R. v. SMITH* (1879), 5 Q. B. D. 95; 49 L. J. M. C. 29; 41 L. T. 664; 44 J. P. 184; 28 W. R. 362, C. A. 3580.

Under Public Health Act, 1875 (c. 55).—In a case under the above Act an appeal was brought to quarter sessions, which quashed the order appealed from, subject to a case reserved. A *certiorari* issued, a rule calling upon prosecutor to show cause was granted, argued in, & discharged by the Q. B. Div. Leave to appeal was not given:—*Held*: the case so reserved fell within the provisions of Jud. Act, 1873 (c. 66), s. 45, & no appeal could be brought from the decision of the Div. Ct. upon it unless special leave to appeal were granted.—*R. v. SWINDON NEW TOWN LOCAL BOARD* (1880), 49 L. J. Q. B. 522; 28 W. R. 804; *sub nom.* *HINTON v. SWINDON NEW TOWN LOCAL BOARD*, 42 L. T. 614; 44 J. P. 505, C. A.

Annotations:—*Distd. Illingworth v. Bulmer East Highway Board* (1884), 53 L. J. M. C. 60. *Mentd. R. v. St. Marylebone Vestry* (1887), 20 Q. B. D. 415; *Re Bettsworth & Richer* (1888), 37 Ch. D. 535; *Tottenham L. B. v. Williamson* (1893), 62 L. J. Q. B. 322; *West Hartlepool Corp. v. Robinson* (1897), 77 L. T. 387; *Re Allen & Driscoll's Contract*, [1904] 1 Ch. 493; *East Ham District Council v. Aylett* (1905), 74 L. J. K. B. 471; *Millard v. Balby-with-Hexthorpe U. C.*, [1905] 1 K. B. 60.

3581. — Judgment on special case stated by quarter sessions—Under Highway Act, 1835 (c. 50), s. 108.—An appeal lies without leave from a judgment of the Q. B. Div. on a special case stated by quarter sessions, pursuant to sect. 108 of the above Act, quashing an order of quarter sessions, as the Q. B. Div., in giving judgment on such a case, exercises its own original common law jurisdiction, & not any new statutory appellate jurisdiction.—*ILLINGWORTH v. BULMER EAST HIGHWAY BOARD* (1884), 53 L. J. M. C. 60; *sub nom.* *R. v. ILLINGWORTH*, 32 W. R. 451, C. A.

N. Costs.

Effect of Judicature Acts on power to award, see No. 2421, *ante*, Nos. 3584, 3738–3742, *post*.

3582. Jurisdiction to award—On making rule absolute for certiorari—High Court & Court of Appeal.—*R. v. WOODHOUSE*, No. 2421, *ante*.

3583. — In civil proceedings on Crown side—Quashing order under Public Health Act, 1875 (c. 55), s. 158.—A rule for a *certiorari* to bring up & quash an order of justices made under the provisions of sect. 158 of the above Act, for the payment of the expenses of pulling down

certain buildings erected contrary to a bye-law, is a civil proceeding on the Crown side of the Q. B. Div., within R. S. C. Ord. 62, r. 2, & the costs are in the discretion of the ct. under Ord. 55.—*R. v. MORRIS* (1883), 31 W. R. 609, D. C.

Annotation:—*Reid. R. v. Parby* (1889), 53 J. P. 774.

See R. S. C., Ord. 65, r. 1.

3584. — Not in criminal matter—Order of justices abating nuisance.—(1) The Div. Ct. granted a writ of *certiorari* to quash an order of justices for the abatement of a nuisance. On a motion by the successful appct. asking for costs:—*Held*: the ct. would not give costs, as, this being a criminal matter, R. S. C., Ord. 65 did not apply.

(2) History of rules as to costs in *certiorari* & effect of Jud. Acts thereon.—*R. v. PARLBY* (2) (1889), 53 J. P. 774; 6 T. L. R. 36, D. C.

Annotations:—*As to* (1) *Reid. R. v. Egerton, Ex p. Munby* (1902), 46 Sol. Jo. 452; *R. v. Woodhouse*, [1906] 2 K. B. 501. *Generally, Mentd. R. v. Gaisford, etc., JJ.* (1891), 66 L. T. 24; *L. C. C. v. West Ham Churchwardens, etc.* [2], [1892] 2 Q. B. 173.

3585. — Committal order for non-payment of rates.—*R. v. EGERTON, Ex p. MUNBY* (1902), 46 Sol. Jo. 452, D. C.

See, now, Costs in Criminal Cases Act, 1908 (c. 15).

3586. Whether court will award—Not where material part of order quashed—Quarter Sessions Appeal Act, 1731 (c. 19), s. 2.—*R. v. MADLEY, STAFFORDSHIRE (INHABITANTS)* (1743), 2 Stra. 1198; Burr. S. C. 202; 93 E. R. 1125.

3587. — Where no recognisance entered into—Removal of summary proceedings.—*R. v. JENKINSON*, No. 3468, *ante*.

3588. — Discretion of court.—The ct. in discharging a rule to quash contribution orders brought up by *certiorari* has power to grant costs against the party bringing them up, although no recognisances have been entered into.

I see no reason why the ct. should not exercise the jurisdiction, which it undoubtedly possesses, of making a party pay costs who in any way abuses the process of the ct. by putting it in motion in a proceeding which is purely vexatious (*COCKBURN, C.J.*).—*R. v. EDMONDS* (1874), L. R. 9 Q. B. 598; 43 L. J. M. C. 156; 31 L. T. 237; 38 J. P. 727; 22 W. R. 944.

Annotations:—*Mentd. R. v. Langrville Overseers, R. v. Copping Syke Overseers* (1884), 14 Q. B. D. 83; *R. v. Bristol, Ex p. Bristol Waterworks Co.*, [1913] 3 K. B. 104.

PART IX. SECT. 9, SUB-SECT. 3.—N.

a. Jurisdiction to award—General rule.—As a general rule, in *certiorari*, costs should follow the event.—*R. v. STANDALL*, [1919] 2 W. W. R. 632; 12 Sask. L. R. 282.—CAN.

b. — To Crown.—The old rule in *certiorari* proceedings, that the Crown neither pays nor receives costs, is no longer in force, & the ct. will grant the costs of a successful appeal to the Crown if asked for.—*R. v. LITTLE* (1898), 6 B. C. R. 321.—CAN.

c. ——The practice before Crown Costs Act, 1910, should be followed & the Crown allowed costs of application to discharge a rule nisi in a purely criminal matter which is successful.—*R. v. JONES* (1911), 16 W. L. R. 429; 16 B. C. R. 117.—CAN.

d. — Against Crown.—As the rules as to *certiorari* proceedings from their very nature apply to the Crown, if the A.-G., being served, as required, with notice of motion to quash, appears in such proceedings by his agent in support of the conviction, costs may be awarded against him.—*R. v. READ*, [1921] 3 W. W. R. 403.—CAN.

e. Whether court will award—

Where remedy by appeal.—It is a ground for refusing costs that a successful deft. might have appealed to a local ct. from the summary conviction.

—*R. v. ROACH* (1914), 26 O. W. R. 564; 6 O. W. N. 630; 19 D. L. R. 362; 23 Can. Crim. Cas. 28.—CAN.

f. — Where affidavit does not disclose sufficient grounds.—Plt.'s right to *certiorari* having been upheld in point of law but his affidavit not disclosing sufficient grounds a rule to quash will be made absolute but without costs.—*Re BANK OF NOVA SCOTIA (ASSESSMENT OF)* (1878), 3 R. & C. 32.—CAN.

g. — Where motion not opposed.—The ct. in considering the question of costs suggested that in future with the notice of motion for a *certiorari*, a notice might also be served stating that unless the prosecution was then abandoned, & further proceedings rendered unnecessary, costs would be asked for, when a strong case would be made for granting deft. costs in cases in which it would be unjust & unfair to put deft. to such costs.—*R. v. WESTGATE* (1892), 21 O. R. 621.—CAN.

h. ——Where motion made to quash conviction for want of jurisdiction & motion unopposed the conviction will be quashed but without costs.—*R. v. McLEOD* (1897), 30 N. S. R. 191.—CAN.

k. — Not unless there be misconduct.—Costs of quashing a conviction on *certiorari* will not be granted, unless there be misconduct on the part of the informant or of the justice.—*R. v. BANKS* (1894), 2 Terr. L. R. 81.—CAN.

l. ——Costs will not be given against appct. where a conviction is sustained only by virtue of an amendment in the conviction.—*R. v. WHIFFIN* (1897), 3 Terr. L. R. 3.—CAN.

m. ——Where a private prosecutor is not at fault he should not be ordered to pay costs & a magistrate in a proper case should be ordered to pay costs irrespective of his conduct.—*R. v. KNOWLES, R. v. WILSON* (1913), 25 W. L. R. 302.—CAN.

n. ——Where *certiorari* is granted to quash a decision of magistrates on the ground of excess of jurisdiction, costs will not be given against them except impropriety on

Sect. 9.—Procedure: Sub-sect. 3, N.; sub-sect. 4, A. & B.; sub-sect. 5.]

3589. — When rule discharged—On ground that affidavit wrongly intitled.]—*Ex p. WALLWORTH*, No. 3397, *ante*.

3590. — Costs of third party.]—A rule *nisi* for a *certiorari* to bring up an order for payment to A., was obtained against the town council of L., but notice was directed to be given to A. The rule was discharged with costs to be paid to defts.:—*Held*: A., who had separately instructed counsel, was entitled to his costs.—*R. v. LICHFIELD TOWN COUNCIL* (1847), 2 New Pract. Cas. 176; 2 New Mag. Cas. 293.

3591. — Respondent justice acting indiscreetly.]—In answer to a rule *nisi* for quashing an order of sessions affirming a conviction, on the ground that one resp. was a justice, entitled in one event to receive costs, & in the opposite event liable to pay them, it appeared that though the justice had not taken any part whatever in the decision, & had not in fact done anything to influence the minds of the other justices in determining the case, he had indiscreetly put himself in a position of ability to speak to the other justices while engaged on a view in the case in the absence of applt. & his attorney:—*Held*: though the rule must be discharged, the justice ought not to have his costs.—*R. v. LONDON JJ.* (1852), 18 Q. B. 421, n.; 16 J. P. 297; 118 E. R. 159.

3592. What persons liable for—Court must decide individuals liable.]—When the order of a town council, being brought up by *certiorari*, is quashed, on motion, with costs, the ct. should decide who is to be charged with costs as prosecutor of the order, & the party should be named in the rule.—*R. v. DUNN* (1844), 5 Q. B. 959; *Dav. & Mer.* 737; 13 L. J. Q. B. 237; 3 L. T. O. S. 102; 9 J. P. 7; 8 Jur. 773; 114 E. R. 1510.

3593. — Members of Corporation—Ultra vires acts of Corporation.]—A rule for a writ of *certiorari* to bring up & quash several orders of a corpn. as being *ultra vires* was made absolute, with costs to be paid by the corpn. A rule was thereupon obtained calling upon certain members of the town council to show cause why they should not individually pay the costs:—*Held*: those members of the council who made or defended the illegal orders were personally liable for the costs, & the rule must be made absolute.—*R. v. VAILE* (1880), 23 Q. B. D. 483; 54 J. P. 134; *sub nom.* *R. v. WHITELEY*, 58 L. J. M. C. 164; 61 L. T. 253, D. C.

3594. What costs awarded—Whether costs of showing cause in first instance.]—*R. v. LONG*, No. 3408, *ante*.

3595. —]—When the Poor Law Comrs., under the privilege given by Poor Law Amendment Act, 1834 (c. 76), s. 106, show cause in the first instance against a motion for a *certiorari*, the ct. will grant them costs if proper ground appear for it, though the general rule of practice is that a

party showing cause in the first instance shall not have costs.—*R. v. POOR LAW COMRS.* (1846), 9 Q. B. 291; 1 New Mag. Cas. 583; 7 L. T. O. S. 256; 11 Jur. 99; 10 J. P. Jo. 387; 115 E. R. 1285.

3596. — Whether as between solicitor & client—Under Public Authorities Protection Act, 1893 (c. 61), s. 1—Application to quash surcharges of auditors.]—Applt., as an auditor appointed by the Local Govt. Board to audit the accounts of a metropolitan borough, had made certain surcharges in respect of abatements made by the rate collector in the collection of the borough rates. A rule having been applied for calling upon the auditor to show cause why a writ of *certiorari* should not issue to remove the surcharges into the High Ct., the Div. Ct. made the rule absolute. The Ct. of Appeal subsequently set that order aside, & an order was made allowing the surcharges & ordering the costs of that appeal & of the proceedings in the K. B. Div. to be paid by the borough. On taxation of the auditor's costs certain items relating to the costs in the K. B. Div. were disallowed on the ground that they were costs as between solr. & client. Upon an order to review & vary the taxing master's certificate:—*Held*: the proceedings in the K. B. Div. not being an action or other proceeding within the meaning of sect. 1 of the above Act, the auditor had not obtained a judgment in the proper sense of the term & was therefore not entitled to solr. & client costs as an incident of the proceedings.—*ROBERTS v. BATTERSEA METROPOLITAN BOROUGH* (1914), 110 L. T. 566; 78 J. P. 265; 12 L. G. R. 898, C. A.

See, further, PUBLIC AUTHORITIES & PUBLIC OFFICERS.

3597. Effect of order as to—Not judgment within Common Law Procedure Act, 1854 (c. 123), ss. 60, 61—Garnishee proceedings.]—Where a rule for a *certiorari* has been discharged with costs, the taxed costs cannot be made the foundation for a garnishee clause against applt. for the *certiorari*, as the order for costs is not a judgment within the meaning of sects. 60 & 61 of the above Act.—*SUNDERLAND LOCAL MARINE BOARD v. FRANKLAND, OLIVER, ETC., GARNISHEES* (1872), 42 L. J. Q. B. 13; 28 L. T. 18; 37 J. P. 439.

Annotation:—Mentd. Best v. Pembroke-Curtis, Garnishee (1873), 42 L. J. Q. B. 212.

SUB-SECT. 4.—CERTIORARI FOR THE PURPOSE OF EXECUTION OR COERCIVE PROCESS.

A. Judgments of Inferior Courts of Civil Jurisdiction.

See, generally, Sect. 6, sub-sect. 4, A., ante.

3598. Necessity to obtain rule of court—During term—Order of judge at chambers insufficient—Inferior Courts Act, 1779 (c. 70).]—Motion for a *certiorari* to remove the record of a judgment from the Guildhall Ct. in the city of N. under the above

their part is proved.—*R. v. COUNTY CLARE JJ.* (1912), 46 L. L. T. 80.—*IR.*

o. —]—When magistrates do not show cause against the quashing of an order the ct. will not compel them to pay the costs of the *certiorari*, unless they have acted *malâ fide* or erred wilfully.—*R. v. LONDON-DERRY JJ.* (1912), 46 L. L. T. 105.—*IR.*

3589 i. — When rule discharged—Point being new.]—The point in a case being new, the ct. discharged, without costs, a rule *nisi* obtained to quash conviction.—*R. v. MORRIS* (1862), 21 U. C. R. 392.—*CAN.*

3589 ii. — On technical ground.]—A rule *nisi* to quash a conviction after return on *certiorari* not being intitled in a case, was discharged, but, being on a technical objection, without costs.—*R. v. MORTON* (1867), 27 U. C. R. 132.—*CAN.*

3594 i. What costs awarded—Whether costs of showing cause in first instance.]—Where a rule *nisi* for *certiorari* to remove a conviction is discharged, the successful party is not entitled to the costs of opposing the rule.—*Ex p. DALRY* (1849), 6 N. B. R. (1 All.) 435.—*CAN.*

p. — Motion opposed by convicting justice & informant.]—A motion for a *certiorari* was opposed by counsel for the convicting magistrate, & the informant. The motion was allowed, with costs:—*Held*: as the magistrate & informant could have avoided liability by not opposing the motion, & as costs were in the discretion of the judge, who followed the usual course by directing them to be paid by the unsuccessful party, there was no necessity for reviewing his discretion.—*R. v. SMITH* (1899), 31 N. S. R. 488.—*CAN.*

Act. The question was whether it was necessary to have a rule of ct. or whether the order of a judge at chambers was sufficient:—*Held*: In term time, a rule of ct. should be obtained to remove the record of a judgment in an inferior ct. under the above Act.—*SMITHERS v. TANNER* (1838), 1 Will. Woll. & H. 84.

3599. Rule absolute in first instance—Where defendant removed from jurisdiction—Inferior Courts Act, 1779 (c. 70), s. 4.]—The ct. will remove a judgment from an inferior ct. in order to issue execution thereon, pursuant to sect. 4 of the above Act, though part of the debt has been levied by process from the inferior ct.

The rule for a *certiorari* under the above Act is absolute in the first instance, & applies to all cases where deft. removes himself & his effects out of the inferior jurisdiction.—*KNOWLES v. LYNCH* (1834), 2 Dowl. 623; 4 Tyr. 477.

3600. ———.]—On application for a *certiorari* to remove record for purposes of execution, deft. having removed himself out of the jurisdiction:—*Held*: the rule for a *certiorari* to remove a record from an inferior jurisdiction would be absolute in the first instance.—*PAWSEY v. GOODAY* (1835), 3 Dowl. 605.

3601. Irregular issue of writ without leave of court—Without improper motive—Amendments allowed—Upon terms.]—If plff. without improper motive has removed a judgment into a superior ct. by an irregular writ of *certiorari*, issued without leave of the ct., such amendments will be allowed, & terms imposed, as will enable him to avail himself of the judgment, without prejudice to deft.—*ROWELL v. BREEDON* (1835), 3 Dowl. 324.

3602. Where original judgment destroyed—Execution under verified copy.]—Where the original judgment in an inferior ct. has been destroyed by fire, the ct. will allow execution to be issued under a verified copy of the judgment.—*CHEESEWRIGHT v. FRANK* (1838), 6 Dowl. 471; 1 Will. Woll. & H. 208.

3603. Whether removal of verified transcript of judgment sufficient—Judgments Act, 1838 (c. 110), s. 22.]—*Qu.*: whether removal of a transcript of the judgment of an inferior ct., made from the minutes or roll of the ct., sealed with the seal & signed by the officer of the ct., for the purpose of suing out execution from a superior ct. on a judgment in an inferior one, is a compliance with sect. 22 of above Act.—*KEMP v. PARRY* (1844), 8 Jur. 576.

3604. Effect of removal—Court will not inquire into regularity of proceedings below—Judgments Act, 1838 (c. 110), s. 22.]—Where a judgment has been removed from an inferior jurisdiction, pursuant to sect. 22 of the above Act, the ct. will not inquire into the regularity of the proceedings of the ct. below, previous to judgment.—*SIMONS v. DE WINTS (COUNT)* (1840), 8 Dowl. 646; 4 Jur. 989.

Annotations:—*Apprvd. & Apld.* *Williams v. Bolland* (1876), 1 C. P. D. 227. *Mentd.* *Bridge v. Branch* (1876), 34 L. T. 905.

3605. ———.]—Where a judgment is removed from an inferior to a superior ct. under sect. 22 of the above Act for execution, the superior ct. has no jurisdiction to inquire into the merits or into the regularity of the proceedings in the ct. below.—*WILLIAMS v. BOLLAND* (1876), 1 C. P. D. 227; 34 L. T. 904; 24 W. R. 644.

Annotation:—*Consd.* *Bridge v. Branch* (1876), 1 C. P. D. 633.

3606. Jurisdiction of superior court—To set aside judgment made without jurisdiction—Mayor's Court of London Procedure Act, 1857 (c. cliv.).]—It is competent to the ct. to which a judgment is

removed under sect. 48 of the above Act to set it aside, if satisfied that it was obtained in a matter over which the inferior ct. had no jurisdiction.—*BRIDGE v. BRANCH* (1876), 1 C. P. D. 633; 34 L. T. 905.

See further, MAYOR'S COURT, LONDON.

B. Orders of Courts of Criminal Jurisdiction.

See, generally, Sect. 6, sub-sect. 4, B., *ante*.

3607. Order removed although *certiorari* taken away—Defendant may take objection to validity of order—Quarter Sessions Act, 1849 (c. 45), s. 18.]—If an order of an inferior ct. is brought up to the Q. B. under sect. 18 of the above Act for the purpose of enforcing execution, deft. may call upon the ct. to review it, although the *certiorari* has been taken away, & as he cannot bring up the order, he may do this without reference to the time the order was made.—*R. v. HELLIER* (1851), 17 Q. B. 229; 4 New Sess. Cas. 725; 21 L. J. M. C. 3; 17 L. T. O. S. 152; 15 J. P. 674; 15 Jur. 901; 117 E. R. 1267.

Annotations:—*Consd.* *R. v. Huntley* (1854), 3 E. & B. 172. *Mentd.* *R. v. Binney* (1853), 22 L. J. M. C. 127. *Mid. Ry. v. Edmonton Union* (1893), 70 L. T. 355; *R. v. London JJ.*, [1895] 1 Q. B. 616.

3608. ———.]—(1) A conviction under the Game Act, 1831 (c. 32), & 5 & 6 Will. 4, c. 20, s. 21, adjudged a pecuniary penalty, to be paid & applied according to law, following the words in Summary Jurisdiction Act, 1848 (c. 43), Sched. Forms 1 & 2; 5 & 6 Will. 4, c. 20, s. 21 provided that one moiety of the penalty should be paid to the informer, & the other moiety to go to the overseers of the poor, & to be paid to one of the overseers or to some other parish officer appointed by the convicting justice:—*Held*: the conviction was sufficient.

(2) By the 1831 Act the *certiorari* was taken away. The conviction having been brought up by *certiorari* under sect. 18 of the above Act in order to be enforced, the ct. entertained the objection that there was no proper adjudication of the penalty.—*R. v. HYDE* (1852), 7 E. & B. 859, n; 21 L. J. M. C. 94; 18 L. T. O. S. 223; 16 J. P. 67; 16 Jur. 337; 119 E. R. 1466.

Annotation:—*Generally*, *Mentd.* *R. v. St. Albans JJ.* (1853), 23 L. J. M. C. 142.

Statutory restrictions.]—*See* Sect. 7, *ante*.

SUB-SECT. 5.—CERTIORARI TO REMOVE ORDERS, ETC. ON CASE STATED.

See, generally, Sect. 6, sub-sect. 5, *ante*.

3609. Application—Notice of—Necessity for.]—

(1) A *certiorari* to remove an order of sessions confirming an order of removal by two justices, must be moved for within six calendar months after such order of sessions made.

(2) Six days' notice of such motion must be given to the justices, pursuant to 15 Geo. 2, c. xviii, notwithstanding the order of sessions was made subject to the opinion of the ct. on a case to be stated, & settled by the justices at sessions.—*R. v. SUSSEX JJ.* (1813), 1 M. & S. 631; 105 F. R. 236; *subsequent proceedings*, 1 M. & S. 724. *Annotation*:—*As to* (2) *Consd.* *R. v. Darton Township* (1844), 14 L. J. M. C. 41.

3610. ——— *Service on clerk of peace.*]—*R. v. BROMLEY ST. LEONARD* (1853), 17 J. P. Jo. 728.

3611. ——— *To whom made—To court stated in notice.*]—*LLANRWST v. GWYDIR* (1856), 21 J. P. Jo. 36.

3612. ——— *Time for making—Within six months*

Sect. 9.—Procedure: Sub-sects. 5 & 6. Part X. Sects. 1 & 2.]

from date of order.]—R. v. SUSSEX JJ., No. 3609, ante.

3613. ————*]*—An application for a writ of *certiorari* to bring up an order of magistrates on which a special case has been granted must be made within six months from the date of the order & not from the settlement of the special case.—*ELLIOT v. THOMPSON* (1875), 33 L. T. 339; 24 W. R. 56; *sub nom. Ex p. ELLIOTT*, 40 J. P. 56.

3614. Court will not order evidence to be returned.*]*—On appeal against an order of removal on the ground, among others, that the examinations whereon the order was made were insufficient, & did not contain legal evidence of any settlement having been gained in the applt. parish, the sessions overruled the objection, & after hearing evidence offered by resps., confirmed the order. subject to a case for the opinion of the ct. of Q. B. on a matter of evidence:—*Held*: a rule for a *certiorari* to bring up the examinations on which the original order was made would be refused.—*R. v. WEST RIDING OF YORKSHIRE JJ., TOLLERTON v. IDLE* (1842), 12 L. J. M. C. 15; 7 Jur. 15.

3615. The return—Amendment of—Case insufficiently stated.*]*—*R. v. HUNTER* (1844), 4 L. T. O. S. 133; 8 J. P. Jo. 773.

3616. ———— Where case not returned.*]*—*R. v. LEEDS (INHABITANTS)* (1846), 6 L. T. O. S. 353; 10 J. P. Jo. 71; *subsequent proceedings*, 10 J. P. Jo. 310.

3617. Objections—To form of *certiorari*—Must be taken before argument on case.*]*—When a case from sessions comes on for argument, it is too late to take an objection to the form of the *certiorari*.—*R. v. FORDHAM (INHABITANTS)* (1839), 11 Ad. & El. 73; 3 Per. & Dav. 95; 9 L. J. M. C. 3; 3 J. P. 785; 4 Jur. 218; 113 E. R. 341.

*Annotations:—**Reid. R. v. St. Olave's, Southwark* (1844), 5 Q. B. 912; *R. v. Snardlow Grdns.* (1844), 3 L. T. O. S. 241; *R. v. Appleby* (1845), 5 L. T. O. S. 71. *Mentd. R. v. Best* (1847), 2 Saund. & C. 90; *R. v. Surrey JJ.* (1847), 11 J. P. 371; *Fox v. Davis & Thorn* (1849), 13 J. P. 71; *Re Stafford JJ., Ex p. Skelton Overseers* (1853), 2 C. L. R. 130; *R. v. Eastern Counties Ry.* (1856), 5 E. & B. 974; *R. v. Suffolk JJ.* (1856), 26 L. T. O. S. 257; *Le Feuvre v. Miller* (1857), 8 E. & B. 321; *Potter v. Brown* (1864), 10 L. T. 525; *R. v. Worksope L. B. of Health* (1866), 5 B. & S. 951; *Ainsworth v. Creeke* (1868), L. R. 4 C. P. 476; *Evans v. Battersea B. C.* (1908), 72 J. P. 189; *Montreal Street Ry. v. Normandin*, [1917] A. C. 170.

3618. ———— To order removed—Must be stated in case.*]*—Where the sessions have granted a case for the opinion of the ct., the ct. will not, on the argument on such case, entertain any question not raised by the sessions for their decision. If it be intended to object to the order of sessions as bad on the face thereof, upon any grounds not raised by the special case, the *certiorari* must be moved for in open ct., & such additional grounds of objection stated.—*R. v. HEYOP (INHABITANTS)* (1846), 8 Q. B. 547; 1 New Mag. Cas. 497; 2 New Sess. Cas. 270; 15 L. J. M. C. 70; 6 L. T. O. S. 392; 10 J. P. 165; 10 Jur. 200; 115 E. R. 981.

*Annotations:—**Consd. R. v. Bangor* (1849), 13 J. P. Jo. 267. *Mentd. R. v. Radnorshire JJ.* (1846), 10 J. P. 580; *R. v. St. Anne's, Westminster (Jones' Settlement)* (1847), 8 L. T. O. S. 363; *R. v. St. Pancras* (1849), 12 Q. B. 298.

3619. ————*]*—The ct. will not allow an objection to an order of sessions on a case reserved, if the objection be not stated in the case, although the rule to quash was moved for in open ct. & the objection then stated, & notice of the objection was given to resps.—*R. v. ST. ANNE, WESTMINSTER (INHABITANTS)* (1847), 8 Q. B. 561; 2 New Mag. Cas. 61; 2 New Sess. Cas. 517;

16 L. J. M. C. 33; 8 L. T. O. S. 338; 11 J. P. 167; 11 Jur. 124; 115 E. R. 986.

*Annotation:—**Mentd. R. v. Hartpur* (1847), 11 Jur. 486.

3620. ———— Though apparent on face of order.*]*—Where an order of removal has been confirmed by sessions, subject to a case reserved, & the original order is thereupon brought up by *certiorari*, the ct. will not notice defects on the face of the order not noticed in the case, although such defects were mentioned in moving for the *certiorari*.—*R. v. HARTPURY (INHABITANTS)* (1847), 8 Q. B. 566; 2 New Mag. Cas. 185; 2 New Sess. Cas. 648; 16 L. J. M. C. 105; 9 L. T. O. S. 196; 11 J. P. 458; 11 Jur. 486; 115 E. R. 989.

3621. ————*]*—By Highway Act, 1835 (c. 50), s. 108, a case reserved at sessions on appeal for the opinion of the ct. is to be brought up by *certiorari*:—*Held*: after a case had been so brought up the decision could only be impugned on the grounds reserved at the sessions, & the order brought up was not liable to be quashed for defects on the face of it not included in those grounds.—*R. v. THOMAS* (1857), 7 E. & B. 399; 28 L. T. O. S. 303; 21 J. P. 661; 3 Jur. N. S. 713; 5 W. R. 321; 119 E. R. 1295.

*Annotations:—**Mentd. Leigh U. C. v. King*, [1901] 1 K. B. 747; *North Staffordshire Ry. v. Hanley Corpn.* (1909), 73 J. P. 477; *Cababé v. Walton-Thames U. C.*, [1914] A. C. 102.

3622. Form of judgment.*]*—The form of the judgment of the Ct. of Q. B. on a case sent from sessions, is simply to make absolute or discharge the rule for quashing the order of sessions, but, if the rule is discharged, the effect of the judgment is to confirm the order of sessions, & to fix the costs on the party bringing up the case, under Quarter Sessions Appeal Act, 1731 (c. 19), s. 2.—*R. v. LATCHFORD (INHABITANTS)* (1844), 6 Q. B. 567; 1 Dav. & Mer. 290; 1 New Mag. Cas. 147; 1 New Sess. Cas. 387; 14 L. J. M. C. 20; 4 L. T. O. S. 133a; 9 J. P. 132; 8 Jur. 1094; 115 E. R. 212.

*Annotations:—**Reid. R. v. St. Margaret's, Westminster* (1845), 1 New Mag. Cas. 328; *R. v. Ellesmere* (1849), 12 Q. B. 19; *R. v. St. Mary in Bungay* (1849), 12 Q. B. 38.

3623. *Procedendo*—To execute judgment—Where conviction confirmed.*]*—A conviction by two justices under Frauds by Workmen Act, 1777 (c. 56), s. 14, by which debt. was sentenced to pay £20 or, in default of payment, be committed to prison, having been quashed on appeal, subject to a case, was removed into the Ct. of Q. B. by *certiorari*, & confirmed. A *levari facias* issued out of the ct., for the penalty & there was a return of *nulla bona*. The ct. doubting its authority to enforce the judgment, so far as related to the imprisonment in default of payment, granted a *procedendo* to carry back to the sessions the record of conviction, & commanding them to proceed to award execution against debt.—*R. v. RUSHWORTH* (1844), 1 New Sess. Cas. 415; 4 L. T. O. S. 142; 9 Jur. 161; 8 J. P. Jo. 836.

3624. *Certiorari* quashed—No order made as to proceedings below.*]*—A case granted by sessions on confirming on appeal a rate made under Public Health Act, 1848 (c. 63), cannot be removed into this ct. by *certiorari*, unless some want of jurisdiction exists to prevent the application of sect. 137 of the Act.

When a rate under the Act had been confirmed on appeal by sessions subject to a case, & the writ of *certiorari* for bringing up the case was quashed by the ct. *quia improvide emanavit* on a rule for that purpose, the ct. refused to make any order respecting the order of sessions.—*R. v. FIELDING* (1853), 21 L. T. O. S. 60; 17 J. P. 343.

3625. ———— Applicant refusing to accept special

case.]—*R. v. STOKES DAMEREL (CHURCHWARDENS) (1855)*, 25 L. T. O. S. 178; 19 J. P. Jo. 374.

3626. Costs.—Court has no jurisdiction to award to successful applicant—Former practice still in force.]—The practice on the Crown side of the Q. B. Div., is preserved unaltered by Jud. Act, 1890 (c. 44), s. 4, & there is no power to give costs to a successful applt. in a case stated by quarter sessions, on an appeal against a poor rate, & brought up by order instead of *certiorari*.—*LONDON COUNTY COUNCIL v. WEST HAM (CHURCHWARDENS) (2)*, [1892] 2 Q. B. 173; 61 L. J. M. C. 210; 67 L. T. 363; 56 J. P. 662; 40 W. R. 662; 8 T. L. R. 593, C. A.

Annotations:—*Folld. R. v. Egerton, Ex p. Munby (1902)*, 46 Sol. Jo. 452. *Consd. R. v. Woodhouse*, [1906] 2 K. B. 501. *Refd. Halkyn District Mines Drainage Co. v. Holywell Union (1893)*, 9 R. 779. *Mentd. Re Fisher*, [1894] 1 Ch. 53; *James v. Jones (1894)*, 10 T. L. R. 208; *R. v. Jones*, [1894] 2 Q. B. 382; *R. v. London County JJ. & L. C. C.*, [1894] 1 Q. B. 453.

3627. — Under Quarter Sessions Appeal Act, 1731 (c. 19), s. 2—Rule discharged—Liability of party bringing up case.]—*R. v. LATCHFORD (INHABITANTS)*, No. 3622, *ante*.

3628. — — — Objections to case unsuccessfully raised by both parties—No order as to costs.]—Upon appeal against a rate sessions amended the rate, subject to a case. A case was afterwards stated, in which objections to the decision of sessions were raised by resps. as well as appls. The *certiorari* to bring up the case was obtained by appls., & it was sworn that resps. had resolved not to impeach the judgment of sessions, unless appls. did:—

Held: the *certiorari* was to be considered as having been obtained by both parties, & resps. were not entitled to recover their costs from appls. under sect. 2 of the above Act.—*R. v. SOUTHAMPTON DOCK CO. (1851)*, 17 Q. B. 83; 20 L. J. M. C. 228; 17 L. T. O. S. 106; 15 J. P. 552; 15 Jur. 859; 117 E. R. 1213.

Annotations:—*Mentd. Mersey Docks v. Liverpool (1873)*, L. R. 9 Q. B. 84; *Port of London Authority v. Orsett Union Assmt. Com.*, [1920] A. C. 273.

— **Effect of Judicature Act.**—*See Nos. 2421, 3584, ante, Nos. 3738–3742, post.*

SUB-SECT. 6.—CERTIORARI TO REMOVE DEPOSITIONS FOR BAIL.

See, generally, Sect. 6, sub-sect. 6, *ante*.

3629. Affidavits—How intitled.]—*Re DRENHAM & CLAYTON*, No. 2977, *ante*.

3630. — Of poverty of prisoner.]—On moving for a *certiorari* to bring up the depositions against a person charged with felony for the purpose of having him bailed in the country, it is necessary to have an affidavit that he cannot afford to be brought up into this ct. by *habeas corpus*.—*R. v. GREGORY (1840)*, 9 Dowl. 129; Woll. 4; 4 J. P. 720; 4 Jur. 1015.

3631. Copy of depositions must be produced.—*Ex p. UNDERWOOD (1854)*, 18 J. P. Jo. 741.

See, further, CORONERS, Vol. XIII., pp. 258, 259, Nos. 385–390.

Part X.—The Attorney-General.

SECT. 1.—IN GENERAL.

Position, functions & powers of.—*See CONSTITUTIONAL LAW*, Vol. XI., p. 511, Nos. 122–126.

Opinion of—Not evidence.—*See CONSTITUTIONAL LAW*, Vol. XI., p. 511, No. 127.

In relation to charities.—*See CHARITIES*, Vol. VIII., pp. 396–398, 400, 401, Nos. 2195–2201, 2206, 2211–2234, 2287–2288, 2293–2302.

Jurisdiction in criminal matters.—*See CRIMINAL LAW & PROCEDURE*.

Proceedings against railway company.—*See RAILWAYS & CANALS*.

In relation to patents.—*See PATENTS & INVENTIONS*.

When performing judicial functions.—*See CONSTITUTIONAL LAW*, Vol. XI., pp. 511, 512, Nos. 122, 128, 129.

When acting as counsel.—*See CONSTITUTIONAL LAW*, Vol. XI., pp. 511–513, Nos. 122, 131–139, 141–145.

Attorney-General of Duchy of Lancaster.—*See CONSTITUTIONAL LAW*, Vol. XI., pp. 513, 514, Nos. 148, 149.

May not issue certiorari.—*See No. 2473, ante*.

Application for quo warranto by.—*See Nos. 1938–1942, ante*.

SECT. 2.—ATTORNEY-GENERAL AND RELATORS.

3632. General rule.—A local authority may act as relators in an action brought by the A.-G. for

the purpose of abating a public nuisance. There is, in fact, no difference between an information filed *ex officio* by the A.-G. & a proceeding by him at the relation of a third party, except as to costs. When once a proceeding by information is in the hands of the A.-G. it becomes substantially a public proceeding, in which the A.-G., if there be no relator, becomes as prosecutor responsible for the costs, while if a relator is introduced, the responsibility for costs is upon the latter. There is authority for saying that a relator need not have any personal interest in the matter, except as one of the public; he need not, in fact, be himself damaged at all; & if that is so, the introduction of the relator is really only a matter of costs (*WILLS, J.*). It is plain that the A.-G. can file an information without a relator at all (*VAUGHAN WILLIAMS, J.*).—*A.-G. v. LOGAN*, [1891] 2 Q. B. 100; 65 L. T. 102; 55 J. P. 615; 7 T. L. R. 279, D. C.

Annotations:—*Refd. A.-G. & Spalding R. C. v. Garner*, [1907] 2 K. B. 480; *Wednesbury Corp'n. v. Lodge Holes Colliery Co.*, [1907] 1 K. B. 78.

3633. Object of having relators—Security for costs.—The main object of having a relator is to secure to defts. the costs of the information in case it should turn out that the information was improperly filed (*LORD GIFFORD, M.R.*).—*A.-G. v. VIVIAN (1826)*, 1 Russ. 226; 38 E. R. 88.

Annotations:—*Mentd. Newcastle Corp'n. v. A.-G. (1845)*, 12 Cl. & Fin. 402; *Lang v. Purves (1862)*, 15 Moo. P. C. C. 389.

3634. — — —.]—*A.-G. v. LOGAN*, No. 3632, *ante*.

PART X. SECT. 2.

3633. 1. Object of having relators—Security for costs.—In an action by A.-G. the only object of inserting the

name of relator in the proceedings is to make him responsible for costs.—*A.-G. v. RUFFNER (1906)*, 12 B. C. R. 299.—*CAN.*

q. Who may be relators—Whether an infant.—An infant cannot be a relator.—*A.-G. v. SCHOLLES (1868)*, 5 W. W. & A.B. 164.—*AUS.*

Sect. 2.—Attorney-General and relators. Sect. 3: Sub-sect. 1.]

3635. ———. —By an award made under an inclosure Act the grass & herbage growing in a private road in a parish was to be let yearly, & the money arising therefrom was to be expended in the repair of the roads in the parish. Defts. caused damage to the letting value of the grass & herbage by wrongfully permitting cattle to graze in the road, & an action was brought against them by the A.-G. on the relation of the rural district council:—*Held*: the action would fail as regards the A.-G., because the right of property which had been injured was one enjoyed by only a limited section of the public, namely, the parishioners, & not by the public at large.

The relator is joined only for the purpose of costs, as the Crown neither pays nor receives costs, at least that was the rule formerly, though it has now been somewhat departed from; but the relator is liable to pay costs, & he has the conduct of the action, & gets his costs if costs are awarded to pltf. (CHANNELL, J.).

Whenever the rights of the Sovereign, as the guardian of the interests of the public, are affected, they must find their protection in the presence of the A.-G. (CHANNELL, J.).—A.-G. & SPALDING RURAL COUNCIL v. GARNER, [1907] 2 K. B. 480; 76 L. J. K. B. 965; 97 L. T. 486; 71 J. P. 357; 23 T. L. R. 563; 5 L. G. R. 944.

See, also, CHARITIES, Vol. VIII., p. 396, Nos. 2201, 2202.

3636. Who may be relators — Local authority.]—A.-G. v. LOGAN, No. 3632, *ante*.

Charity proceedings.]—See CHARITIES, Vol. VIII., p. 396, Nos. 2203–2205.

3637. Discretion to sue on behalf of relators—Absolute.]—The jurisdiction of the A.-G. to decide in what cases it is proper for him to sue on behalf of relators is absolute.—LONDON COUNTY COUNCIL v. A.-G., [1902] A. C. 165; 71 L. J. Ch. 268; 86 L. T. 161; 66 J. P. 340; 50 W. R. 497; 18 T. L. R. 298, H. L.; *affg*. S. C. *sub nom.* A.-G. v. LONDON COUNTY COUNCIL, [1901] 1 Ch. 781, C. A.

Annotations.—*Reid*. A.-G. v. Wimbledon House Estate Co., [1904] 2 Ch. 34; A.-G. v. Birmingham, Tame & Rea District Drainage Board, [1910] 1 Ch. 48. *Mentd.* A.-G. v. Manchester Corp., [1906] 1 Ch. 643; A.-G. v. Mersey Ry., [1907] 1 Ch. 81; A.-G. v. West Gloucestershire Water Co., [1909] 2 Ch. 338; Vacher v. London Soc. of Compositors, [1912] 3 K. B. 547.

3638. Right to file information without relators.]—A.-G. v. LOGAN, No. 3632, *ante*.

3639. Interest of relators.]—A.-G. v. LOGAN, No. 3632, *ante*.

3640. Whether Attorney-General affected by conduct of relators.]—The A.-G. represents the Crown & the public, & the conduct of the relator has not necessarily any bearing on the matter, unless in some way the position of the A.-G. is tainted by the conduct of the relator, there is no reason why he should not succeed as representing the interests of the public, whatever the conduct of the relator may have been (BOWEN, L.J.).—KIRKHEATON DISTRICT LOCAL BOARD v. AINLEY, SONS & Co., [1892] 2 Q. B. 274; 61 L. J. Q. B. 812; 67 L. T. 209; 57 J. P. 36; 41 W. R. 99; 8 T. L. R. 663; 36 Sol. Jo. 608, C. A.

Annotations.—*Mentd.* Ferrand v. Hallas Land & Building Co., [1893] 2 Q. B. 135; Fordom v. Parsons, [1894] 2 Q. B. 780; Yorkshire West Riding Council v. Holmfrith Urban S. A., [1894] 2 Q. B. 842; *Re* Derbyshire County

O. L. R. 530; 7 O. W. R. 368, 455.—CAN.

3638 i. Right to file information without relators.]—The A.-G. can sue either with or without a relator.—A.-G. v. HALIFAX (1903), 36 N. S. R. 177.—CAN.

3637 i. Discretion to sue on behalf of relators—Absolute.]—The discretion of the A.-G. as representing the crown in the commencement & conduct of litigation is not subject to investigation or control by the ct.—A.-G. v. ONTARIO v. HARGRAVE (1906), 11

Council & Derby Corp., [1896] 2 Q. B. 397; Peebles v. Oswaldtwistle U. D. C. [1897] 1 Q. B. 384; West Riding of Yorkshire Rivers Board v. Gaunt (1902), 19 T. L. R. 140; A.-G. & Monmouthshire County Council v. Scott (1905), 74 L. J. K. B. 803; Staffordshire County Council v. Seisdon R. D. C. (1907), 96 L. T. 328; Butterworth v. West Riding of Yorkshire Rivers Board, [1909] A. C. 45; Waltham Holy Cross U. D. C. v. Lee Conservancy Board (1910), 103 L. T. 192; Rochford R. C. v. Port of London Authority, [1914] 2 K. B. 916; West Riding of Yorkshire Rivers Board v. Linthwaite U. C., [1914] 2 K. B. 13.

3641. — Laches.]—Qu.: whether laches on the part of a relator can be imputed to the A.-G.—A.-G. v. METCALF & GREIG, [1907] 2 Ch. 23; 76 L. J. Ch. 259; 96 L. T. 351; 71 J. P. 182; 23 T. L. R. 263; 51 Sol. Jo. 229; *revid.* on other grounds, [1908] 1 Ch. 327, C. A.

3642. ——A.-G. v. WIMBLEDON HOUSE ESTATE CO., LTD., No. 3651, *post*.

Whether laches imputable to Attorney-General.]—*See* Nos. 3674–3679, *post*.

3643. Information at relation of plaintiff—Properly termed “action” —R. S. C., Ord. 1, r. 1.]—In an action by the A.-G. at the relation of pltf. the statement of claim had been intitled & indorsed “information & statement of claim.” It was objected that under R. S. C., Ord. 1, r. 1, the title “information” was no longer necessary, & that the term was either obsolete or comprised in the term “action”:—*Held*: in an action by the A.-G. at the relation of a pltf. the title “information” should no longer be used.—A.-G. v. SHREWSBURY BRIDGE CO. (1880), 42 L. T. 79.

3644. Relators entitled to claim relief in own right—On proof of special damage.]—Where the relators join the A.-G. as co-pltfs. they are entitled on proof of special damage to an injunction in their own right, although they could not have succeeded if the A.-G. had not.—A.-G. v. BARKER (1900), 83 L. T. 245; 16 T. L. R. 502.

3645. Joinder of antagonistic claims.]—Semble: antagonistic cases cannot be combined by co-pltfs. in an action, & the A.-G. is not a proper party to proceedings if his claim is founded upon a case, which could only succeed if the case of the informant & co-pltf. should fail.—A.-G. v. DURHAM (EARL) (1882), 46 L. T. 16.

3646. Effect of fiat of Attorney-General—Relator authorised to proceed in matter of public interest—Not clothed with prerogative of Crown.]—Where an action is brought by the A.-G. at the relation of private individuals, it is not his practice to exercise the prerogative of the Crown, & to select the tribunal by which the action shall be tried. He does not interfere with the discretion of the ct. All that he does is by his fiat to authorise the relators to proceed in a matter involving public interest; but he does not clothe them with the prerogative of the Crown, nor has he any intention of so doing.—A.-G. v. WILSON (1900), 70 L. J. Ch. 234; 83 L. T. 646; 49 W. R. 195, C. A.

Consent of Attorney-General to proceedings.]—*See, generally*, Sect. 5, *post*.

Appointment of new relator—Necessity for consent of Attorney-General—When & by whom appointed.]—*See* CHARITIES, Vol. VIII., pp. 396, 397, Nos. 2206–2212.

Notice of motion—Must be on behalf of Attorney-General—Not of relator.]—*See* CHARITIES, Vol. VIII., p. 396, No. 2200.

Costs.]—*See* Part XI., *post*.

3645 i. Joinder of antagonistic claims.]—In an information & bill by the A.-G. & pltf. it is not proper to join matters in which both have not a common interest.—A.-G. v. SCHOLES (1888), 5 W. W. & A. B. 164.—AUS.

SECT. 3.—RIGHTS, DUTIES AND PRIVILEGES.

SUB-SECT. 1.—IN GENERAL.

See, generally, CONSTITUTIONAL LAW, Vol. XI., pp. 511-513.

3647. Right to amend information.—*A.-G. v. HENDERSON* (1796), 3 Anst. 714; 145 E. R. 1016.

See, also, CONSTITUTIONAL LAW, Vol. XI., p. 527, No. 312.

Charity proceedings.—*See CHARITIES, Vol. VIII., p. 396, Nos. 2198, 2199.*

3648. Right to turn special case into special verdict—By leave of court.—The question in this case, which was the amount of legacy duty payable by defts. arose upon an information filed by the A.-G. against defts. to recover from them, as beneficial residuary legatees & exors., the duty of 10 per cent. charged to be due to the Crown upon the residue of certain personal property, bequeathed by testator to B. & his wife, & to have been retained by all the defts., as exors., etc., for the benefit of B. Being entirely a question of law, a verdict was taken for the Crown, subject to the opinion of the ct. upon a special case reserved, with leave to turn it into a special verdict.—*A.-G. v. BACCHUS* (1821), 9 Price, 30; 147 E. R. 11; *on appeal* (1823), 11 Price, 547, Ex. Ch.

Annotations:—Mentd. A.-G. v. Burnie (1830), 3 Y. & J. 530; *Atcheson v. Atcheson* (1849), 11 Beav. 485; *Ward v. Ward* (1880), 14 Ch. D. 506.

3649. ———.—*Semle:* the A.-G. has not power to turn a special case into a special verdict, no leave having been given for that purpose at the trial.—*A.-G. v. DIMOND* (1831), 1 Cr. & J. 356; 1 Tyr. 286; 9 L. J. O. S. Ex. 90; 148 E. R. 1458.

Annotations:—Reid. A.-G. v. New York Breweries Co., [1898] 1 Q. B. 205. *Mentd. Horne v. Hope* (1834), 4 Tyr. 878; *Arnold v. Arnold* (1837), 2 My. & Cr. 256; *Tyler v. Bell* (1837), 2 My. & Cr. 89; *A.-G. v. Bouwens* (1838), 4 M. & W. 171; *Custance v. Bradshaw* (1845), 4 Hare, 315; *R. v. Stamps & Taxes Comrs.* (1849), 18 L. J. Q. B. 201; *Hervey v. Fitzpatrick* (1854), Kay, 421; *A.-G. v. Brunning* (1860), 8 H. L. Cas. 244; *A.-G. v. Pratt* (1874), 43 L. J. Ex. 108; *A.-G. v. Sudeley*, [1896] 1 Q. B. 354; *Smelting Co. of Australia v. I. R. Comrs.*, [1897] 1 Q. B. 175; *I. R. Comrs. v. Muller & Co.'s Margarine*, [1901] A. C. 217; *Re Scott, Scott v. Scott*, [1916] 2 Ch. 268; *Re Scull, Scott v. Morris* (1917), 87 L. J. Ch. 59.

3650. Whether entitled to restrain or impeach alienation of corporate property—Pending grant of charter.—The A.-G. has no title to sue in order to restrain, or afterwards impeach, the alienation of corporate property made pending the granting of the charter, except as regards markets & tolls, given to the corpn. by a private Act.—*A.-G. v. AVON CORPN.* (1863), 3 De G. J. & Sm. 637; 2 New Rep. 564; 33 L. J. Ch. 172; 9 L. T. 187; 11 W. R. 1050; 46 E. R. 783, L. JJ.

Annotation:—Mentd. Evans v. Bagshaw (1870), 39 L. J. Ch. 145.

Alienation of corporate property, see, generally, CORPORATIONS, Vol. XIII., pp. 373 et seq.

3651. Right to maintain action for mandatory injunction—Public Health (Buildings in Streets) Act, 1888 (c. 52).—(1) The A.-G. may maintain an action for a mandatory injunction to pull down a building erected in contravention of sect. 3 of the above Act.

(2) *Qu.*: how far laches may be imputed to the A.-G. & the relators in an action for injunction where the latter are a local authority.—*A.-G. v. WIMBLEDON HOUSE ESTATE CO., LTD.*, [1904]

2 Ch. 34; 73 L. J. Ch. 593; 91 L. T. 163; 68 J. P. 341; 20 T. L. R. 489; 2 L. G. R. 826.

Annotation:—As to (2) Consd. A.-G. v. Birmingham, Tame & Rea Drainage Board, [1910] 1 Ch. 48.

3652. Right to injunction—Public body committing statutory offence.—In an action by the A.-G. complaining of a breach of a public statute by a public body the ct. is not bound, on proof of the breach, to grant an injunction, but may allow defts. a reasonable time within which to comply with the statute.—*A.-G. v. BIRMINGHAM, TAME & REA DISTRICT DRAINAGE BOARD*, [1912] A. C. 788; 82 L. J. Ch. 45; 107 L. T. 353; 76 J. P. 461; 11 L. G. R. 194, H. L.; *varying*, [1910] 1 Ch. 48, C. A.

Annotations:—Reid. A.-G. v. Kerr & Ball (1914), 79 J. P. 51. *Mentd. Countess Warwick S.S. Co. v. Nickel Soc. Anon.*, Anglo-Northern Trading Co. v. Emlyn, Jones & Williams (1917), 87 L. J. K. B. 309; *Metropolitan Water Board v. Dick Kerr*, [1917] 2 K. B. 1; *Robinson v. R.*, [1921] 3 K. B. 183.

3653. Right to recover unpaid probate duty—By information.—Proceedings by way of information by the A.-G. can be taken to recover unpaid probate duty (*SMITH, L.J.*).—*A.-G. v. NEW YORK BREWERIES CO.*, [1898] 1 Q. B. 205; 67 L. J. Q. B. 86; 78 L. T. 61; 62 J. P. 132; 46 W. R. 193; 14 T. L. R. 119; 42 Sol. Jo. 132, C. A.; *affd. sub nom. NEW YORK BREWERIES CO. v. A.-G.*, [1899] A. C. 62, H. L.

Annotation:—Mentd. Winans v. A.-G. (No. 2), [1910] A. C. 27.

Right to begin.—*See CONSTITUTIONAL LAW, Vol. XI., p. 528, Nos. 325-327.*

3654. Right to reply—General rule.—I think, in principle, I cannot resist the claim of right on the part of the Crown to reply, if the learned counsel thinks fit to do so. The true ground is this, that the Crown, by its prerogative, from time immemorial has claimed the right, & whether the A.-G. appears in person or, by reason of accident or other cause, does not appear, & is consequently represented by some other gentleman (whether the Solr.-General, a Queen's Counsel or Sergeant, or an ordinary barrister, is utterly immaterial), the Crown does possess the right, & counsel is entitled to exercise it if he thinks fit (*KELLY, C.B.*).—*R. v. WATERS & ELLIS* (1870), 72 C. C. Ct. Cas. 539.

3655. ———.—It appears to me that the A.-G.'s right to reply is in the nature of a prerogative right; it is a right on the part of the Crown, exercised by the officer of the Crown, the A.-G. Whenever the A.-G., not only appears in person, but makes a statement that he appears really on behalf of the Crown, he has a right to reply, & that right is not affected by the question of whether or no defts.'s counsel calls witnesses, he has the right if he chooses to exercise it (*CHANNELL, B.*).—*R. v. DIXBLANC* (1872), 76 C. C. Ct. Cas. 103.

Annotation:—Mentd. R. v. Lee Kun (1915), 85 L. J. K. B. 515.

3656. ———.—The right of reply is in my judgment vested in the A.-G. by reason of his representing the Crown, in all cases which are really prosecuted at the suit of the Crown, by which I mean not ordinary prosecutions, which are not prosecuted at the suit of the Crown, although the Queen's name appears nominally as the prosecutor, but prosecutions on behalf of the country at the instigation & direction of the law officers of the

PART X. SECT. 3, SUB-SECT. 1.

36471. Right to amend information.—The annexing of a new count to the formal charge in writing signed by the counsel & agent for the A.-G. is sufficient to incorporate it in the charge.—*R. v. WILSON* (1913), 26 W. L. R. 148.—*CAN.*

r. Right to prefer charge without preliminary inquiry before magistrate.—A preliminary inquiry by a magistrate is not necessary before a charge can be preferred by the A.-G.—*R. v. WILSON* (1913), 26 W. L. R. 148.—*CAN.*
s. Attorney-General for Ireland—Service on—How effected.—Proper service on the A.-G. is through Crown

solr.—*Re MULLAY, Ex p. MULLAY* (1828), 3 Mol. 71; 2 Ir. L. Rec. 1st ser. 209.—*IR.*

t. Right to precedence in all business.—*A.-G. v. CARDEN*, 1 How. E. E. 6.—*IR.*

s. Right to reply.—*A.-G. v. MAGILL* (1829), 2 Ir. L. Rec., 1st ser. 312.—*IR.*

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Crown, & which may for this purpose be termed State prosecutions. Wherever a case is really prosecuted in that sense, I think the Crown has the prerogative right of reply & if the A.-G., whose duty it is to conduct such a prosecution, appears in person to conduct it, he has that prerogative right, not because of a personal privilege attached to himself, but because he is the representative of the Crown, exercising the prerogative of the Crown. For this reason it is that the Solr-General in the absence of the A.-G. & representing him, has always been allowed the same right, & not because of a personal privilege attached to his office, & for the same reason I am of opinion that any Queen's Counsel or ordinary barrister appearing as representative of the A.-G. in such prosecutions as I have referred to, is entitled, on behalf of the Crown to the same privilege of reply (HAWKINS, J.).—*R. v. Wood* (1878), 88 C. C. Ct. Cas. 204.

3657. — Intervention on behalf of defendant —Witnesses called by plaintiff & defendant.]—

Semble: in an action in which witnesses are called by pltf. & deft. & the Crown has intervened on behalf of the latter, the A.-G. has not the right to a general reply.—*Rowf v. Brenton* (1828), 2 State Tr. N. S. 251; 3 Man. & Ry. K. B. 133; Concanen's Rep. p. 259.

Annotations.—*Reid*. *Dixon v. Farrer* (1886), 18 Q. B. D. 43. *Mentd.* *Doe d. Carthew v. Brenton* (1830), 4 Moo. & P. 186; *Whittingham v. Bloxham* (1831), 4 C. & P. 597; *Evans v. Taylor* (1838), 7 Ad. & El. 617; *R. v. Richmond Manor* (1841), 5 Jur. 605; *Anglesey v. Hatherton* (1842), 10 M. & W. 218; *Doe d. William IV. v. Roberts* (1844), 13 M. & W. 520; *Doe d. Dand v. Thompson* (1845), 7 Q. B. 897; *Rogers v. Brenton* (1847), 10 Q. B. 26; *Ex p. Exeter Bp., Gorham v. Exeter Bp.* (1850), 10 C. B. 102; *Shaw v. Beck* (1853), 8 Exch. 392; *Jessop v. Jessop* (1861), 30 L. J. P. M. & A. 193; A.-G. to Prince of Wales v. Crossman (1866), L. R. 1 Exch. 381; *Sutton Harbour Improvement Co. v. Plymouth Town Grdms.* (1890), 63 L. T. 772; *Mercoer v. Denne*, [1905] 2 Ch. 538.

3658. — Indictment for misdemeanour.]—When the A.-G. or a King's Counsel appears officially as such to conduct a prosecution on an indictment for misdemeanour, he is entitled to reply, though deft. calls no witnesses.—*R. v. Alexander & Isaacson* (1829), Mood. & M. 439.

Annotation.—*Reid*. *R. v. Gardner* (1845), 1 Car. & Kir. 628.

3659. — Writ of error.]—Counsel for the Crown, where the Crown is deft. in a writ of error, is not necessarily entitled to the final reply, though the Crown is the real litigant party.—*O'Connell v. R.* (1844), 11 Cl. & Fin. 155, 184, 230; 1 Cox, C. C. 413; 8 E. R. 1061, 1074, 1091; *sub nom.* *R. v. O'Connell*, 5 State Tr. N. S. 1, 741, 776, H. L.

Annotations.—*Mentd.* *R. v. Ramsden & Verity* (1844), 2 L. T. O. S. 288, n.; *King v. R.* (1845), 9 Jur. 832; *R. v. Downing & Powys* (1845), 1 Cox, C. C. 156; *Gregory v. Brunswick* (1846), 3 C. B. 481; *Hayes & Rice v. R.*, *Fogarty v. R.* (1846), 2 Cox, C. C. 105; *O'Brien v. R.* (1846), 2 Cox, C. C. 122; *R. v. Gompertz* (1846), 9 Q. B. 824; *Campbell v. R.* (1847), 11 Q. B. 814; *Re Dunn* (1847), 5 C. B. 215; *A.-G. v. Vernon* (1848), 12 J. P. 251; *A.-G. v. Warren* (1848), 10 L. T. O. S. 445; *Douglas v. R.* (1848), 17 L. J. M. C. 176; *Dunn v. R.* (1848), 13 Jur. 233; *Gregory v. R.* (1848), 15 Q. B. 957; *R. v. Mitchell* (1848), 6 State Tr. N. S. 545; *Shea v. R.*, *Dwyer v. R.* (1848), 3 Cox, C. C. 141; *Ryalls v. R.* (1849), 11 Q. B. 795; *Wright v. R.* (1849), 14 Q. B. 148; *Irvine (or Douglas) v. Kirkpatrick* (1850), 17 L. T. O. S. 32; *Ex p. Purdy* (1850), 9 C. B. 201; *Holloway v. R.* (1851), 17 Q. B. 317; *R. v. Rowlands* (1851), 2 Den. 364; *Ex p. Rose* (1852), 18 Q. B. 751; *Kendall v. Wilkinson* (1855), 24 L. J. M. C. 89; *R. v. Eagleton* (1855), 24 L. J. M. C. 158; *New River Co. v. Hertford Land Tax Comrs.* (1857), 2 H. & N. 129; *A.-G. v. Sillem* (1864), 2 H. & C. 581; *Latham v. R.* (1864), 5 B. & S. 635; *R. v. Heane* (1864), 4 B. & S. 947; *Burton v. Low* (1867), 16 L. T. 385; *Irwin v. Grey* (1867), L. R. 2 H. L. 20; *Mulcahy v. R.* (1867), 15 W. R. 446; *R. v. O'Brien* (1867), 15 W. R. 516; *R. v. Murphy* (1869), L. R. 2 P. C. 535; A.-G., for New

South Wales v. Murphy (1870), 21 L. T. 598; *Brown v. Esmonde* (1870), 18 W. R. 711; *Anderson v. Morice* (1876), 1 App. Cas. 713; *White v. R.* (1876), 13 Cox, C. C. 318; *Castro v. R.* (1881), 6 App. Cas. 329; *Mackonochie v. Penzance* (1881), 6 App. Cas. 424; *R. v. Parnell* (1881), 14 Cox, C. C. 508; *Combe v. De La Bere* (1882), 22 Ch. D. 316; *Enraght v. Penzance* (1882), 7 App. Cas. 240; *R. v. Bradlaugh* (1883), 15 Cox, C. C. 217; *R. v. Manning* (1883), 12 Q. B. D. 241; *Mogul S.S. Co. v. McGregor, Gow* (1885), 15 Q. B. D. 476; *R. v. Pierce* (1887), 3 T. L. R. 586; *R. v. Stephens* (1888), 4 T. L. R. 479; *Mogul S.S. Co. v. McGregor, Gow* (1889), 23 Q. B. D. 598; *R. v. Quinn* (1898), 19 Cox, C. C. 78; *R. v. Plummer*, [1902] 2 K. B. 339; *Sykes v. Barraclough*, [1904] 2 K. B. 875.

3660. — Information affecting rights & property of Crown.]—*Semble*: the Crown is entitled to a right of general reply in cases of informations filed by the A.-G. affecting the rights, property, & revenue of the Crown.—*A.-G. v. London Corp.* (1845), as reported in 14 L. J. Ch. 305; *affd.* on other grounds, *sub nom.* *London Corp. v. A.-G.* (1848), 1 H. L. Cas. 440, H. L. *Annotation*.—*Mentd.* *A.-G. v. Halling* (1846), 15 M. & W. 687.

3661. — Non-jury cases.]—*Qu.*: whether the A.-G. has a vested right of reply in other than jury cases.—*R. v. Canterbury (Archbp.)* (1848), 11 Q. B. 483; 6 State Tr. N. S. 409; 17 L. J. Q. B. 252; 12 Jur. 862; 116 E. R. 557.

Annotations.—*Mentd.* *Exeter Bp. v. Fust & Canterbury Archbp.* (1850), 14 Jur. 876; *R. v. Canterbury Archbp.* (1856), 6 E. & B. 546; *R. v. Oxford Bp.* (1879), 41 L. T. 122; *Reid v. Lincoln Bp.* (1889), 14 P. D. 83; *R. v. Canterbury Archbp.*, [1902] 2 K. B. 503; *Poulton v. Moore*, [1915] 1 K. B. 400.

3662. — In Court of Exchequer.]—The Crown has, in all cases in the Ct. of Exch., a right to a general reply.—*Buckingham (Duke) v. Inland Revenue Comrs.* (1851), 2 L. M. & P. 311.

3663. — No evidence called for defence.]—The right to reply when the prisoner calls no witnesses ought to be limited to the A.-G. when prosecuting in person.—*R. v. Beckwith* (1858), 7 Cox, C. C. 505.

3664. —]—The right of reply, where no evidence is called for the defence, on behalf of the Crown in Mint cases, is not admitted.—*R. v. Taylor* (1859), 1 F. & F. 535.

— *See, further*, CONSTITUTIONAL LAW, Vol. XI., p. 529, Nos. 328–334.

3665. Signing pleadings — Demurrer.]—A demurrer on the part of the Crown in a revenue case must be signed by the A.-G.—*R. v. Woollett* (1835), 2 Cr. M. & R. 256; 3 Dowl. 694; 1 Gale, 157; 5 Tyr. 786; 4 L. J. Ex. 136; 150 E. R. 112.

3666. Right to appear—In Court of Common Pleas—Though not a serjeant.]—The A.-G., not being a serjeant, has a right of audience on behalf of the Crown in the Ct. of C. P.—*Paddock v. Forrester* (1810), 4 State Tr. N. S. 557; 1 Man. & G. 583; 8 Dowl. 834; 1 Scott, N. R. 391; 9 L. J. C. P. 342; 133 E. R. 465.

Annotations.—*Mentd.* *Gorham v. Exeter Bp., Ex p. Exeter Bp.* (1850), 10 C. B. 102; *Dixon v. Farrer* (1886), 18 Q. B. D. 43.

Duty to attend—On settlement of charity schemes.]—*See* CHARITIES, Vol. VIII., p. 407, Nos. 2427–2432.

3667. Right to trial at bar.]—An indictment found by the grand jury in the Central Criminal Ct. for perjury committed within the jurisdiction of that ct. contained two counts, in one of which the perjuries assigned were in respect of an oath taken before a comr. in Ch. sitting in the City of London, & in the other in respect of an oath taken by deft. in the Sessions House at Westminster, on the trial of an ejectment in the Ct. of C. P. The indictment was removed into this ct. by a writ of *certiorari*, which was required by Central Criminal Court Act, 1846 (c. 24), specified Middlesex, as the county in which it should be tried. On the

application of the A.-G. it was ordered that the trial should be at bar.—*R. v. CASTRO* (1874), L. R. 9 Q. B. 350; 43 L. J. Q. B. 105; 30 L. T. 320; 38 J. P. 342; *on appeal* (1880), 5 Q. B. 490, C. A.; *sub nom.* *CASTRO v. R.* (1881), 6 App. Cas. 229, H. L.

Annotations.—*Consd.* *Dixon v. Farrer* (1886), 17 Q. B. D. 658. *Mentd.* *R. v. Cox & Railton* (1884), 1 T. L. R. 181.

3668. — *As of course.*—In an action under Merchant Shipping Act, 1876 (c. 80), s. 10, against the Secretary of the Board of Trade, to recover damages for the detention of a ship for survey without reasonable & probable cause:—*Held*: (1) the A.-G. was entitled to demand as of right a trial at bar under Crown Suits, etc. Act, 1865 (c. 104); (2) the ct. was bound on his waiving that right to change the venue to any county wherein he might elect to have the action tried.—*DIXON v. FARRER* (1886), 18 Q. B. D. 43; 56 L. J. Q. B. 53; 55 L. T. 578; 35 W. R. 95; 3 T. L. R. 35; 6 Asp. M. L. C. 52, C. A.

Annotations.—*Generally*, *Mentd.* *Graham v. Public Works & Bldgs. Comrs.*, [1901] 2 K. B. 781; *H.M.'s Works & Public Bldgs. Comrs. v. Pontypridd Masonic Hall Co.*, [1920] 2 K. B. 233.

3669. — — — *—*—*R. v. JAMESON*, No. 2477, *ante.*

— *—*—*See* CONSTITUTIONAL LAW, Vol. XI., p. 528, Nos. 318–324.

3670. *Duty to decide whether proceedings should be carried on—Where improper information filed.*

—Where a useless & improper information has been filed, the ct. cannot refuse a decree, but will first communicate with the A.-G. that he may have the opportunity of deliberately considering whether he thinks it desirable for the interests of the public that the proceedings should be carried on.—*A.-G. v. MERCHANT TAILORS' CO.* (1835), 5 L. J. Ch. 62.

3671. *Right to discovery.*—The right of discovery is the same between the Crown & the subject as between subject & subject.—*A.-G. v. LONDON CORPN.* (1850), 2 Mac. & G. 247; 2 H. & Tw. 1; 19 L. J. Ch. 314; 14 L. T. O. S. 501; 14 Jur. 205; 42 B. R. 95, L. C.; *affy.* (1849), 12 Beav. 8.

Annotations.—*Appld.* *A.-G. v. Newcastle-upon-Tyne Corpn.*, [1897] 2 Q. B. 384. *Consd.* *A.-G. v. Storey* (1912), 107 L. T. 430. *Refd.* *Emmerson v. Maddison*, [1906] A. C. 569. *Mentd.* *Smith v. Stair* (1849), 2 H. L. Cas. 807; *Flitcroft v. Fletcher* (1856), 25 L. J. Ex. 94; *Horton v. Bott* (1857), 2 H. & N. 249; *A.-G. v. Hammer* (1858), 27 L. J. Ch. 837; *London Gas-Light Co. v. Chelsea* (1859), 6 C. B. N. S. 411; *Inglby v. Shafto* (1863), 33 Beav. 31; *Stoate v. Rew* (1863), 14 C. B. N. S. 209; *Goodman v. Holroyd* (1864), 15 C. B. N. S. 839; *Towne v. Cocks* (1874), L. R. 9 Exch. 45; *Saunders v. Jones* (1877), 7 Ch. D. 435; *Bewicke v. Graham* (1880), 50 L. J. Q. B. 396; *Marriott v. Chamberlain* (1886), 54 L. T. 714.

3672. — *—*—*A.-G. v. NEWCASTLE-UPON-TYNE CORPN.*, No. 309, *ante.*

3673. — *—*—*A.-G. v. STOREY* (1912), 107 L. T. 430; 56 Sol. Jo. 735, C. A.

3674. *Delay or laches by Attorney-General—Whether available as defence.*—Laches may be a defence to an application for an injunction by way of information as well as upon a bill.—*A.-G. v. SHEFFIELD GAS CONSUMERS CO.* (1853), 3 De G. M. & G. 304; 22 L. J. Ch. 811; 21 L. T. O. S. 49; 17 Jur. 677; 1 W. R. 185; 43 E. R. 119; *sub nom.* *SHEFFIELD UNITED GAS CO. v. SHEFFIELD GAS CONSUMERS CO.*, *A.-G. v. SHEFFIELD GAS CONSUMERS CO.*, 7 Ry. & Can. Cas. 650, L. C. & L. JJ.

Annotations.—*Follid.* *A.-G. v. Grand Junction Canal Co.*, [1909] 2 Ch. 505. *Refd.* *A.-G. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34; *A.-G. v. Scott*, [1905] 2 K. B.

160. *Mentd.* *Drake v. West* (1853), 22 L. J. Ch. 375; *Broadbent v. Imperial Gas Co.* (1857), 7 De G. M. & G. 436; *Freud v. Dennett* (1861), 5 L. T. 73; *Biddulph v. St. George's Vestry* (1863), 3 De G. J. & Sm. 493; *Swaine v. G. N. Ry.* (1864), 4 De G. J. & Sm. 211; *A.-G. v. Kingston-on-Thames Corpn.* (1865), 34 L. J. Ch. 481; *Pentney v. Lynn Paving Comrs.* (1865), 12 L. T. 818; *Sutton v. S. E. Ry.* (1865), L. R. 1 Exch. 32; *Goldamid v. Tunbridge Wells Improvement Comrs.* (1866), 1 Ch. App. 349; *Cooke v. Forbes* (1867), L. R. 5 Eq. 166; *Lillywhite v. Trimmer* (1867), 36 L. J. Ch. 525; *Luscombe v. Steer* (1867), 17 L. T. 229; *A.-G. v. Cambridge Consumers Gas Co.* (1868), 4 Ch. App. 71; *A.-G. v. Lonsdale* (1868), L. R. 7 Eq. 377; *A.-G. v. Gee* (1870), L. R. 10 Eq. 131; *Pudsey Coal Gas Co. v. Bradford Corpn.* (1873), 21 W. R. 286; *A.-G. & Dommes v. Basingstoke Corpn.* (1876), 45 L. J. Ch. 726; *Smith v. Mid. Ry. & L. & Y. Ry.* (1877), 37 L. T. 224; *Fritz v. Hobson* (1880), 14 Ch. D. 542; *Preston Corpn. v. Fulwood L. B. (No. 1)* (1885), 34 W. R. 196; *Fanshawe v. London & Provincial Dairy Co.* (1888), 4 T. L. R. 694; *Reinhardt v. Mentastl* (1889), 42 Ch. D. 685; *A.-G. v. Preston Corpn.* (1896), 13 T. L. R. 14; *Garton v. Guildford, Godalming & Woking Joint Hospital Board* (1899), 43 Sol. Jo. 205; *St. Mary, Battersea, Vestry v. County of London & Brush Provincial Electric Lighting Co.* (1899), 80 L. T. 31; *A.-G. v. Brighton & Hove Co-op. Assocn.*, [1900] 1 Ch. 276.

3675. — *—*—*Delay or laches may not be imputed to the A.-G. suing on behalf of the public, where it might be against an individual in a similar case.*—*A.-G. v. BRADFORD CANAL (PROPRIETORS)* (1866), L. R. 2 Eq. 71; 15 L. T. 9; 14 W. R. 579.

Annotation.—*Refd.* *A.-G. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34.

3676. — *—*—*The maxim, nullum tempus occurrit Regi, prevents laches by itself being successfully set up against the A.-G. (JELF, J.).*—*A.-G. v. SCOTT*, [1905] 2 K. B. 160; *sub nom.* *A.-G. & MONMOUTHSHIRE COUNTY COUNCIL v. SCOTT*, 74 L. J. K. B. 803; 68 J. P. 502; 20 T. L. R. 630; 48 Sol. Jo. 623; 2 L. G. R. 1113; *affd. sub nom.* *A.-G. v. SCOTT*, [1905] 2 K. B. 170, C. A.

Annotations.—*Mentd.* *High Wycombe R. D. C. v. Palmer* (1905), 69 J. P. 167; *Chichester Corpn. v. Foster*, [1906] 1 K. B. 167; *A.-G. v. Sharpness New Docks & Gloucester & Birmingham Navigation Co.*, [1914] 3 K. B. 1; *Worsborough U. D. C. v. Barnsley British Co-op. Soc.* (1914), 111 L. T. 429.

3677. — *—*—*A.-G. v. WIMBLEDON HOUSE ESTATE CO., LTD.*, No. 3651, *ante.*

3678. — *—*—*In an action brought by the A.-G., at the relation of an urban district council, who also sued as plffs., for an injunction to restrain a co. from diverting a larger quantity of water from the Avon than was provided for by their Act, & from permitting their works to remain in such a condition as to divert such excess of water:—Held*: (1) owing to the lapse of time, the injunction should not be granted; (2) delay is a circumstance to be considered in determining whether the ct. shall interfere, although the application is by the A.-G. on behalf of the public.—*A.-G. v. GRAND JUNCTION CANAL CO.*, [1909] 2 Ch. 505; 78 L. J. Ch. 681; 101 L. T. 150; 73 J. P. 421; 25 T. L. R. 720; 7 L. G. R. 1014.

Annotation.—*As to* (2) *Consd.* *A.-G. & Godstone R. D. C. v. Smith* (1912), 76 J. P. 253.

3679. — *—*—*By an inclosure award in 1814 it was awarded that there should be a certain public highway of the width of thirty-five feet in the parish of B., the land adjoining the road on the south side thereof being allotted to the predecessors in title of S., who were required under the award to fence the land bounding the road. In or about the year 1883 the predecessors in title of S., erected an iron fence separating his land to the south of the road from the roadway. At some time thereafter the land to the north of the road*

36701. *Duty to decide whether proceedings should be carried on.*—The A.-G. is dominus litis & can discontinue proceedings or control their conduct & settlement independently of any

relator.—*CASGRAIN v. ATLANTIC & NORTH-WEST RY.* 282.—*CAN.*

36741. *Delay or laches by Attorney-General—Whether available as defence.*

—*A.-G. v. WALKER* (1878), 25 Gr. 233.—*CAN.*

367411. — *—*—*CLARKE v. R.* (1892), 3 Exch. C. R. 1.—*CAN.*

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was fenced, & the width of the roadway before the year 1906 had become reduced to between twenty-five & twenty-seven feet. In 1906 it was alleged that S. removed the fence bounding the land on the south side of the road nearer to the fence on the north side, thus encroaching on the highway. In 1907, the rural district council called on S. to set back his fence so as to restore a width of thirty-five feet to the roadway, & on his refusal, twice took down the fence, which S. on each occasion re-erected in the same position. In an action by the A.-G. & the rural district council for an injunction to restrain deft. S. from inclosing or encroaching upon the highway or from erecting any fence within thirty-five feet of the northern boundary of the road:—*Held*: there had been no encroachment in 1906, & in respect of any alleged encroachment in 1883, the lapse of time was sufficient defence to the action.—*A.-G. & GODSTONE RURAL DISTRICT COUNCIL v. SMITH (WARREN)* (1912), 76 J. P. 253.

—*See, further, CHARITIES, Vol. VIII., p. 354, No. 1518; CONSTITUTIONAL LAW, Vol. XI., p. 522, Nos. 276–283; & generally, LIMITATION OF ACTIONS.*

3680. Whether counterclaim can be brought against Attorney-General.]—A.-G. of DUCHY OF LANCASTER v. MORESBY, [1919] W. N. 69.

Defences available against Crown.]—See CONSTITUTIONAL LAW, Vol. XI., p. 529, Nos. 337 *et seq.*

Right to choose issue.]—See CONSTITUTIONAL LAW, Vol. XI., p. 529, No. 335.

Right to withdraw record.]—See CONSTITUTIONAL LAW, Vol. XI., p. 529, No. 336.

Undertaking as to damages.]—See CONSTITUTIONAL LAW, Vol. XI., p. 527, Nos. 313–315.

SUB-SECT. 2.—TO REPRESENT THE PUBLIC.

3681. General rule.]—Whenever the rights of the Sovereign, as the guardian of the interests of the public, are affected, they must find their protection in the presence of the A.-G. (CHANNELL, J.).—A.-G. & SPALDING RURAL COUNCIL v. GARNER, No. 3685, *ante*.

3682. —.]—An interference with public rights in respect of a highway is an interference with a right of property, & the A.-G. suing at the relation of the public in respect of the invasion of such public rights has at least as large a right to invoke the protection of the ct. as a private owner suing in respect of his rights.—A.-G. v. ASHBORNE RECREATION GROUND CO., [1903] 1 Ch. 101; 72 L. J. Ch. 67; 87 L. T. 561; 67 J. P. 73; 51 W. R. 125; 19 T. L. R. 39; 47 Sol. Jo. 50; 1 L. G. R. 146.

Annotations.—*Consol. Devonport Corpn. v. Tozer*, [1903] 1 Ch. 759; *A.-G. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34. *Mentd. Russell v. Midhurst R. D. C.* (1908), 98 L. T. 530; *Carlton Illustrators v. Coleman*, [1911] 1 K. B. 771.

3683. Where public interest endangered—At law or in equity.]—The A.-G. has a right to represent

3680 I. Whether counterclaim can be brought against Attorney-General.]—Matter proper for petition of right cannot be set up by way of counterclaim.—A.-G. FOR ONTARIO v. HARGRAVE (1906), 11 O. L. R. 530; 7 O. W. R. 388, 455; 8 O. W. R. 127.—*CAN.*

b. Right to certiorari without notice.]—R. v. NEWCASTLE JJ. (1880), *Dra.* 114.—*CAN.*

c. Dominion Order in Council—Ap-

plication to quash conviction under.]—On application to quash a conviction made under Order-in-Council there is sufficient service of notice of motion if it be served upon the provincial A.-G.—R. v. RUTKA, [1918] 2 W. W. R. 788; 42 D. L. R. 276.—*CAN.*

d. Acting Attorney-General—Position, functions & powers of.]—An acting A.-G. is in a different position from that of a deputy or agent of the A.-G.; he is

the public, either in equity or by prosecution at law, in cases where the public interests are exposed to danger or mischief (LORD TUBRO, O.).—*A.-G. v. BIRMINGHAM & OXFORD JUNCTION RY. CO.* (1851), 3 Mac. & G. 453; 7 Ry. & Can. Cas. 972; 16 Jur. 118; 42 E. R. 335, L. O.

Annotations.—*Reid. A.-G. v. L. & N. W. Ry.*, [1900] 1 Q. B. 78. *Mentd. Hare v. L. & N. W. Ry.* (1860), 9 W. R. 33.

3684. —By acts ultra vires—Substantial public mischief must be shown—To justify intervention.]—The mere fact that a corp. is acting *ultra vires* does not warrant a suit on behalf of the Sovereign, or the public to stop the act complained of, unless it is shown that some plain & substantial public mischief is being done.—*A.-G. v. GREAT EASTERN RY. CO.* (1879), 11 Ch. D. 449; 48 L. J. Ch. 428; 40 L. T. 265; 27 W. R. 759, C. A.; *affd.* (1880), 5 App. Cas. 473, H. L.

Annotations.—*Consol. A.-G. v. West Gloucestershire Water Co.*, [1909] 2 Ch. 338. *Reid. L. C. C. v. A.-G.*, [1902] A. C. 165. *Mentd. A.-G. v. Shrewsbury & Kingland Bridge Co.* (1882), 51 L. J. Ch. 746; *Guinness v. Land Corp. of Ireland* (1882), 22 Ch. D. 349; *L. & N. W. Ry. v. Price* (1883), 11 Q. B. D. 485; *Small v. Smith* (1884), 10 App. Cas. 119; *Wenlock v. River Dee Co.* (1885), 10 App. Cas. 354; *Harris v. De Pinna* (1886), 33 Ch. D. 238; *Henderson v. Bank of Australasia* (1888), 40 Ch. D. 170; *Johns v. Balfour* (1889), 1 Meg. 191; *Sheffield & South Yorkshire Permanent Bldg. Soc. v. Aislewood* (1889), 44 Ch. D. 412; *Poster v. L. C. & D. Ry.*, [1895] 1 Q. B. 711; *A.-G. v. L. & N. W. Ry.*, [1900] 1 Q. B. 78; *A.-G. v. Mersey Ry.* (1907), 61 Sol. Jo. 624; *Re Kingsbury Collieries & Moore's Contract*, [1907] 2 Ch. 259; *Peel v. L. & N. W. Ry.*, [1907] 1 Ch. 5; *Metropolitan Water Board v. Solomon* (1908), 77 L. J. Ch. 517; *Amalgamated Soc. of Railway Servants v. Osborne*, [1910] A. C. 87; *Vaoher v. London Soc. of Compositors*, [1912] 3 K. B. 547; *Re Woking Urban Council (Basingstoke Canal) Act, 1911*, [1914] 1 Ch. 300; *Dundee Harbour Trustees v. Nicol*, [1915] A. C. 550; *County Hotel & Wine Co. v. L. & N. W. Ry.*, [1918] 2 K. B. 251; *R. v. Bedfordshire County Council*, *Ex p. Sear*, [1920] 2 K. B. 465; *A.-G. v. Fulham Corp.*, [1921] 1 Ch. 440.

3685. —Unauthorised trading by railway company—Construction of Railway Regulation Act, 1844 (c. 85), & Railway & Canal Traffic Act, 1854 (c. 31).—An Act of Parliament constituting a railway co. is a contract between the co. & the public, the performance of which, the public has an interest in enforcing, & therefore, a railway co. with the ordinary powers was restrained from carrying on the business of coal merchants, at the suit of the A.-G. on the relation of a stranger to the co.

The above Acts do not take away the jurisdiction of the ct. or of the A.-G.—*A.-G. v. GREAT NORTHERN RY. CO.* (1860), 1 Drew. & Sm. 154; 29 L. J. Ch. 794; 2 L. T. 653; 6 Jur. N. S. 1006; 8 W. R. 556; 62 E. R. 337.

Annotations.—*Reid. McCormac v. Queen's University* (1867), 16 W. R. 733; *A.-G. v. G. E. Ry.* (1879), 11 Ch. D. 449; *A.-G. v. Shrewsbury (Kingsland) Bridge Co.* (1882), 30 W. R. 916. *Mentd. Hare v. L. & N. W. Ry.* (1861), 30 L. J. Ch. 817; *G. W. Ry. v. Met. Ry.* (1863), 9 Jur. N. S. 562; *Evershed v. L. & N. W. Ry.* (1877), 2 Q. B. D. 254; *Norton v. L. & N. W. Ry.* (1878), 9 Ch. D. 623; *A.-G. v. Manchester Corp.*, [1906] 1 Ch. 643; *A.-G. v. West Gloucestershire Water Co.* (1909), 101 L. T. 265.

3686. —Water company.]—A water co., authorised by their special Acts to erect waterworks & supply water within certain limits which included the parish of A., agreed to supply water to W., the owner of property in the adjoining parish of H., & accordingly extended their main

the A.-G. for the time being, & clothed with the powers & authority of the office.—*R. v. FAULKNER* (1911), 18 W. L. R. 634; 19 Can. Crim. Cas. 47.—*CAN.*

PART X. SECT. 3, SUB-SECT. 2.

3683 I. Where public interest endangered—At law or in equity.]—A.-G. v. GALWAY CORPN. (1829), 1 Mol. 95.—*IR.*

in the parish of A. to the boundary where it adjoined the parish of H., & then, at the cost of W., laid a main some distance along a highway in the parish of H. & thence laid pipes to W.'s property:—*Held*: the water co. were acting *ultra vires*, & an injunction was granted at the suit of the A.-G.—*A.-G. v. WEST GLOUCESTERSHIRE WATER CO.*, [1909] 2 Ch. 388; 78 L. J. Ch. 746; 101 L. T. 258; 73 J. P. 453; 25 T. L. R. 650; 7 L. G. R. 1078, C. A.

3687. — *Actual injury need not be shown.*—Upon an information filed by the A.-G. to restrain a public body from transgressing powers conferred by an Act of Parliament, it is not necessary to prove that injury to the public will result from the acts complained of.—*A.-G. v. COCKERMOUTH LOCAL BOARD* (1874), L. R. 18 Eq. 172; 30 L. T. 590; 38 J. P. 660; 22 W. R. 619.

Annotations:—*Consd.* *A.-G. v. G. E. Ry.* (1879), 11 Ch. D. 449; *A.-G. v. Shrewsbury (Kingsland) Bridge Co.* (1882), 21 Ch. D. 752; *Brooks v. Terry* (1888), 4 T. L. R. 678; *A.-G. v. L. & N. W. Ry.*, [1900] 1 Q. B. 78. *Refd.* *A.-G. v. Logan*, [1891] 2 Q. B. 100; *A.-G. v. Birmingham, Tame & Rea District Drainage Board*, [1910] 1 Ch. 48. *Mentd.* *Durrant v. Branksome U. D. C.* (1897), 76 L. T. 739; *A.-G. v. Dorchester Corp.* (1906), 94 L. T. 682.

3688. — *When an illegal act is being committed which in its nature tends to the injury of the public, the A.-G. can maintain an action on behalf of the public to restrain the commission of the act without adducing any evidence of actual injury to the public.*—*A.-G. v. SHREWSBURY (KINGSLAND) BRIDGE CO.* (1882), 21 Ch. D. 752; 51 L. J. Ch. 746; 46 L. T. 687; 30 W. R. 916.

Annotations:—*Consd.* *A.-G. v. L. & N. W. Ry.*, [1900] 1 Q. B. 78. *Refd.* London Assn. of Shipowners & Brokers v. London & India Docks Joint Committee, [1892] 3 Ch. 242; *A.-G. v. Birmingham, Tame & Rea District Drainage Board*, [1910] 1 Ch. 48.

3689. — *Upon an information filed by the A.-G. to restrain a public body with statutory powers from infringing a term introduced into their Act in the interests of the public, as a condition of the exercise of their powers, it is not necessary to prove that injury to the public results from that infringement.*—*A.-G. v. LONDON & NORTH WESTERN RY. CO.*, [1900] 1 Q. B. 78; 69 L. J. Q. B. 26; 81 L. T. 649; 63 J. P. 772; 16 T. L. R. 30, C. A.

Annotations:—*Refd.* *A.-G. v. Dorchester Corp.* (1905), 93 L. T. 290; *A.-G. v. Birmingham, Tame & Rea District Drainage Board*, [1910] 1 Ch. 48; *A.-G. v. Long Eaton U. D. C.* (1914), 111 L. T. 514. *Mentd.* *Islington Vestry v. Hornsey U. C.*, [1900] 1 Ch. 695; *A.-G. v. Ashborne Recreation Ground Co.*, [1903] 1 Ch. 101; *Blekmore v. Dimmer*, [1903] 1 Ch. 158.

3690. — *Court will only interfere where public interest injured.*—The A.-G. has the right to call the attention of the ct. to a breach of duty in disobeying bye-laws without any actual injury to any public interest being shown, but the question whether an injunction will be granted is in the discretion of the ct., which will not generally interfere unless a public injury be done.—*A.-G. v. KERR & BALL* (1914), 79 J. P. 51; 12 L. G. R. 1277.

3691. — *Not rights of inhabitants of particular parish.*—*A.-G. & SPALDING RURAL COUNCIL v. GARNER*, No. 3635, *ante*.

3692. — *By variation of statutory contract.*—By a Light Railway Ord., confirmed under Light Railways Act, 1896 (c. 48), a railway co. was authorised to construct a swing bridge over a canal, & it was so constructed. Sect. 29 of the Ord. began: "For the protection of the Navigation Co. the following provisions shall have effect," & sub-sects. 3 & 4 of sect. 29 were clearly for the

benefit of the public. Sub-sect. 16 provided that the railway co. & the navigation co. might agree for any variation or alteration of works in this sect. provided for, or of the manner in which the same shall be executed. The railway co. & the navigation co. proposed to convert the swing bridge into a fixed bridge. Upon action by the A.-G. at the relation of an owner of vessels using the canal, to restrain the proposed conversion as being an impediment to the navigation:—*Held*: the heading to sect. 29 did not make that sect. a mere contract between the cos. which they could vary as they pleased, as sub-sects. 3 & 4 & other sub-sects. were clearly for the benefit of the public, & the A.-G. could therefore sue on behalf of the public.—*A.-G. v. NORTH EASTERN RY. CO.*, [1915] 1 Ch. 905; 84 L. J. Ch. 657; 113 L. T. 25; 79 J. P. 500; 13 L. G. R. 1130, C. A.

— *By excessive & injurious exercise of powers.*—*See COMPULSORY PURCHASE OF LAND & COMPENSATION*, Vol. XI., p. 110, No. 62.

The Attorney-General as a party.]—*See* Sect. 4, *post*.

Right of corporation to sue—Not affected by concurrent right of Attorney-General.]—*See CORPORATIONS*, Vol. XIII., p. 419, No. 1391.

SUB-SECT. 3.—CHOICE OF FORUM AND VENUE.

3693. *General rule.*—The A.-G., suing in a matter of public right, is entitled to choose his own ct.—*A.-G. v. MID-KENT RY. CO. & SOUTH-EASTERN RY. CO.* (1867), 3 Ch. App. 100; 32 J. P. 244; 16 W. R. 258, L. J.

Annotations:—*Mentd.* *Dowling v. Pontypool, Caerleon & Newport Ry.* (1874), L. R. 18 Eq. 714; *A.-G. v. L. & N. W. Ry.*, [1900] 1 Q. B. 78.

3694. *Right to change venue—On special grounds.*—*R. v. DURHAM (BP.)* (1565), cited in 5 Jur. at p. 804.

Annotation:—*Mentd.* *A.-G. v. Churchill* (1841), 5 Jur. 803.

3695. — *Without leave of court.*—An indictment on an issue joined in K. B. may be tried in the county where the offence was committed by writ of *nisi prius*, & the A.-G. may, by the King's letters, have the writ without leave of the ct.—*FAREWETHER'S CASE* (1634), Cro. Car. 348; 79 E. R. 905.

Annotation:—*Mentd.* *Cutting v. Williams* (1703), 1 Salk. 24.

3696. — *Unless cause shown.*—*R. v. BARKER* (1703), 8 M. & W. 184, n.; 151 E. R. 1002.

3697. *Right to refuse consent to change of venue—On information at suit of Attorney-General.*—Deft., in an information at the suit of the A.-G., is not entitled to a change of venue, without his consent.—*A.-G. v. SMITH* (1816), 2 Price, 113; 146 E. R. 38.

Annotation:—*Refd.* *A.-G. of Prince of Wales v. Crossman* (1866), 4 H. & C. 568.

3698. *Right to transfer of action.*—Deft. having entered his claim to certain coffee that had been seized for breach of the revenue laws, & received it back on giving sureties to the Crown, & commenced an action of trover in the C. P. against the seizing officer, who pleaded thereto, a writ of appraisement had issued, but no information had been actually filed:—*Held*: the A.-G. was at liberty to remove the cause into the Ct. of Exch.—*A.-G. v. KINGSTON* (1841), 8 M. & W. 163; 1 Dowl. N. S. 358; 11 L. J. Ex. 72; 5 Jur. 580; 151 E. R. 993.

Annotation:—*Refd.* *Adams v. Fremantle* (1848), 2 Exch. 453.

PART X. SECT. 3, SUB-SECT. 3.

e. Right to regulate place of trial—

Scire facias.—The A.-G. has the right to direct writs of *sc. fa.* on recognisances to the sheriff of any county

& thereby to regulate the place of trial.—*A.-G. v. HARTLEY* (1834), Hays & Jo. 763.—*IR.*

Sect. 3.—Rights, duties and privileges: Sub-sect. 3. Sect. 4.]

3699.—Without affidavit in support.]—A vessel having a quantity of arms on board was seized in the port of London by defts., officers of customs, but was afterwards unconditionally restored. An action of trespass having been brought against defts. for the seizure, in the Ct. of C. P., a rule was made absolute in the first instance, on the suggestion of the A.-G. & without affidavit, to remove the cause into the Ct. of Exch.—*ADAMS v. FREMANTLE* (1848), 2 Exch. 453; 6 Dow. & L. 10; 17 L. J. Ex. 312; 11 L. T. O. S. 225; 12 J. P. 507; 154 E. R. 569.

3700. On waiver of right to trial at bar—Under Crown Suits, etc. Act, 1865 (c. 104).—*DIXON v. FARRER*, No. 3668, ante.

See, also, CONSTITUTIONAL LAW, Vol. XI., pp. 525–527, Nos. 294–309a.

SECT. 4.—WHETHER A NECESSARY PARTY.

In actions relating to Crown.]—See CONSTITUTIONAL LAW, Vol. XI., p. 527, No. 317.

In relation to commons.]—See COMMONS & RIGHTS OF COMMON, Vol. XI., pp. 32, 47, Nos. 416, 667, 668.

In relation to charities.]—See CHARITIES, Vol. VIII., pp. 397, 398, Nos. 2213–2234.

—Attendance of Attorney-General on settling charity schemes.]—See CHARITIES, Vol. VIII., p. 407, Nos. 2427–2432.

In relation to highways.]—See HIGHWAYS, STREETS & BRIDGES.

To obtain injunction.]—See INJUNCTION.

In actions relating to nuisance.]—See NUISANCE.

In actions under Public Health Act, 1875 (c. 55).]

—See PUBLIC HEALTH & LOCAL ADMINISTRATION.

In actions relating to water.]—See WATERS & WATERCOURSES.

3701. General rule.]—Pltf. may sue in respect of a public right without joining the A.-G., first, where the interference with the public right is such that some private right of his is at the same time interfered with, & secondly, where no private right is interfered with, but pltf. in respect of his public right suffers special damage peculiar to himself from the interference with the public right.—*BOYCE v. PADDINGTON BOROUGH COUNCIL*, [1903] 1 Ch. 109; 72 L. J. Ch. 28; 87 L. T. 564; 67 J. P. 23; 51 W. R. 109; 19 T. L. R. 38; 47 Sol. Jo. 50; 1 L. G. R. 98; *subsequent proceedings*, [1903] 2 Ch. 556, C. A.; *sub nom.* PADDINGTON CORPN. v. A.-G., [1906] A. C. 1, H. L.

3702. Private usurpation of franchise.]—The K. B. will not grant an information for private usurpation of a franchise, but the proper remedy is, to apply to the A.-G.—*IBBOTSON'S CASE* (1736), *Lee temp. Hard.* 261; 95 E. R. 168.

Annotation.—*Mentd.* R. v. Speyer, R. v. Cassel, [1916] 1 K. B. 595.

3703. Information against public officer.]—Information against a public officer must be by the A.-G. *ex officio*.—*R. v. PHILLIPS* (1767), 4 Burr. 2089; 98 E. R. 90.

3704. Proceedings by foreign Government—In respect of stock purchased by preceding Govern-

ment.]—The ct. refused to order dividends received before the bill filed, of stock purchased by the old govt. of Switzerland, to be paid into ct. by the trustees on the application of the present govt., without having the A.-G. a party.—*DOLDER v. BANK OF ENGLAND* (1805), 10 Ves. 352; 32 E. R. 881, L. C.

3705. Recovery of public money.]—Public money may be sued for by the A.-G. in his own name alone.—*MUCKLOW v. A.-G.* (1816), 4 Dow. 1; 3 E. R. 1069, L. C.

3706. Application of charity funds.]—A decree pronounced in 1670, in a suit against the trustees of a charity, to which the A.-G. was not a party, having directed the trustees under the indemnity of the ct., to perform an agreement with pltf. in that suit, for granting a lease of tithes for 980 years at a fixed pecuniary rent, & an exchange of lands, & the conveyances having been accordingly executed, & the rent constantly paid, & the lands enjoyed in conformity to the decree, an information by the A.-G., at the relation of the present trustees, against the person claiming under pltf. in the former suit, for an account of tithes, not stating the decree of 1670, which was set forth in the answer, was dismissed.

As to the A.-G., not being a party he has no interest. His office is to see that those who have the legal estate duly administer the property. But he would be no party to a conveyance, the legal fee being in the trustees, who are competent to convey. It is not necessary that the A.-G. should be a party to a contract on this subject (*PLUMER, M.R.*).—*A.-G. v. WARREN* (1818), 2 Swan. 291; 1 Wils. Ch. 387; 36 E. R. 627.

Annotations.—*Mentd.* A.-G. v. Hungerford (1834), 8 Bl. N. S. 437; A.-G. v. Newark-upon-Trent Corpn. (1842), 1 Hare, 395; St. Thomas' Hospital v. Charing Cross Ry. (1861), 1 John. & H. 400; Lang v. Purves (1862), 15 Moo. P. C. C. 389; Re Clergy Orphan Corpn. (1894) 3 Ch. 145; Re Mason's Orphanage & L. & N. W. Ry., [1896] 1 Ch. 54; Re Howard Street Congregational Chapel, Sheffield, [1913] 2 Ch. 690.

3707. Application for payment out of funds in court—Where Crown interested.]—In 1837, the husband of A. was convicted of felony & transported for life. Testator, who died in 1852, bequeathed a portion of his residuary personal estate to A., & in a suit for the administration of testator's estate a sum representing this share was carried over to the account of A.:—*Held*: A. was entitled to have such sum paid to her as against the claims of the Crown, without serving the A.-G.—*ATLEE v. HOOK* (1854), 2 Eq. Rep. 638; 23 L. J. Ch. 776; 2 W. R. 511.

3708. Petition under Legitimacy Declaration Act, 1858 (c. 93).]—To a petition under the above Act the A.-G. is the necessary resp. Petitioners have a right to have their case heard as between themselves & him, & the parties cited, *pro interesse suo*, cannot sustain a plea of *res judicata*, as between themselves & petitioners, in bar of the whole proceedings.—*SHEDDEN v. PATRICK* (1860), 2 Sw. & Tr. 170; 164 E. R. 958; *sub nom.* SHEDDEN v. A.-G., 30 L. J. P. M. & A. 217; 3 L. T. 592; 6 Jur. N. S. 1163; 9 W. R. 285.

3709. Action by public authority—Parish vestry—Infringement of public right of way.]—The vestry of a parish, who, by virtue of a local Act, combined with Metropolis Management Amend-

36991. Right to transfer action—Without affidavit.]—On an application to remove an action into the high ct. on ground that the revenue will be affected by it the statement of the A.-G. to that effect is sufficient.—*PRICE v. RAYARD* (1861), 10 N. B. R. 234.—CAN.

PART X. SECT. 4.

1. In relation to lands—Where Crown interested.]—If the Crown has rights & duties to litigate any matter the A.-G. is the proper person to represent the Crown.—*A.-G. v. BELSON* (1867), 4 W. W. & A.B. 57.—AUS.

2. —.—.]—Where parties claim under two different fee farm grants, each reserving a rent, but of different amounts, inasmuch as the rights of the Crown are concerned, the A.-G. ought to be before the ct.—*HOVENDEN v. ANNESLEY (LORD)* (1806), 2 Sch. & Lef. 607.—IR.

ment Act, 1862 (c. 102), are constituted the custodians of ways within the parish, & are empowered, in case of obstruction of such ways, to take such proceedings for the opening thereof, as they may think fit, must, if they institute proceedings in Ch. for the removal of such an obstruction, do so by information in the name of the A.-G., & not by the bill.—**BERMONDSEY VESTRY v. BROWN** (1865), L. R. 1 Eq. 204; 35 Beav. 226; 13 L. T. 574; 30 J. P. 118; 11 Jur. N. S. 1031; 14 W. R. 213; 55 E. R. 882.

Annotations.—**Reid**, Wallasey L. B. v. Gracey (1887), 36 Ch. D. 593; **Sheringham U. D. C. v. Holsey** (1904), 91 L. T. 325. **Mentd.**, Nuneaton L. B. v. General Sewage Co. (1875), L. R. 20 Eq. 127; **A.-G. v. Biphosphated Guano Co.** (1879), 11 Ch. D. 327; **Vernon v. St. James, Westminster Vestry** (1880), 16 Ch. D. 449.

3710. — Local board of health—Overcharge of public sewers.—A local board of health contracted with a sewage co., granting a lease to the co. of the sewage works of a town, & of a plot of land, the co. covenanting that they would during the term keep the works in proper working order so that the sewers might not at any time be stopped. To a bill by the local board against the co., complaining that the co.'s works were insufficient to treat the sewage successfully, & praying for an injunction to restrain defts. from permitting the sewage to remain in the sewers, so as to be a nuisance to ptfs., defts. demurred, on the grounds that it was not the practice of the ct. to restrain the infringement of a public right at the suit of a corp., except at the instance or in the presence of the A.-G.:—**Held**: the demurrer would be overruled, & an injunction granted.—**NUNEATON LOCAL BOARD v. GENERAL SEWAGE CO.** (1875), L. R. 20 Eq. 127; 44 L. J. Ch. 561.

Annotations.—**Mentd.**, Strelley v. Pearson (1880), 43 L. T. 155; **Wallasey L. B. v. Gracey** (1887), 36 Ch. D. 593.

3711. — Parish council—Enforcement of public right.—A parish council cannot, in their own name, without the A.-G., maintain an action to enforce a right of the inhabitants of the parish to the use of a well or spring of water.—**STOKE PARISH COUNCIL v. PRICE**, [1899] 2 Ch. 277; 68 L. J. Ch. 447; 80 L. T. 643; 63 J. P. 502; 47 W. R. 663.

Annotations.—**Reid**, **Sheringham U. D. C. v. Holsey** (1904), 91 L. T. 225; **A.-G. & Spalding R. C. v. Garner**, [1907] 2 K. B. 480.

3712. Private interest in public right—Access to highway.—Where ptff. suffers a particular injury from the obstruction of a public way, a bill for an injunction will lie, & the A.-G. need not be a party.—**COOK v. BATH CORPN.** (1868), L. R. 6 Eq. 177; 18 L. T. 123; 32 J. P. 741.

Annotations.—**Reid**, **A.-G. v. Lonsdale** (1868), L. R. 7 Eq. 377. **Mentd.**, **Pudsey Coal Co. v. Bradford Corp.** (1873), 42 L. J. Ch. 293; **Vernon v. St. James, Westminster Vestry** (1880), 16 Ch. D. 449.

3713. — ——An owner of premises abutting on a highway enjoys as a private right the right of access from his own premises to the highway, & any interference with that access is an interference with a private right.

Ptffs. have a special & individual interest in the public right to this portion of the highway & they are entitled to sue without joining the A.-G., because they sue in respect of that individual interest (**BUCKLEY, J.**).—**CHAPLIN (W. H.) & Co., LTD. v. WESTMINSTER CORPN.**, [1901] 2 Ch. 329;

37121. Private interest in public right.—**HINCKLEY v. GILDERSLEEVE** (1872), 19 Gr. 212.—CAN.

h. Proceedings by Municipal Corporation or ratepayer—To maintain proprietary right.—**HART v. MACILREITH** (1907), 41 N. S. R. 351.—CAN.

k. Usurpation by corporate body of

power to grant degrees.—Proceedings are properly taken in name of A.-G.—**A.-G. v. K. & Q. COLLEGE OF PHYSICIANS IN IRELAND** (1863), 16 Ir. Jur. 362.—IR.

l. Application to quash liquor licence by bona fide resident.—A.-G. need not

70 L. J. Ch. 679; 85 L. T. 88; 65 J. P. 661; 49 W. R. 586; 17 T. L. R. 576; 45 Sol. Jo. 597.

Annotations.—**Reid**, **Boyce v. Paddington B. C.**, [1903] 1 Ch. 109. **Mentd.**, **Anglo-Algerian S.S. Co. v. Boulder Line** (1907), 77 L. J. K. B. 187.

3714. Proceedings under private Act—Special provisions for rights of individual.—Where a private Act of Parliament contains a provision for the special protection or benefit of an individual, he may enforce his rights thereunder by an action without either joining the A.-G. as a party or showing that he has sustained any particular damage.—**DEVONPORT CORPN. v. PLYMOUTH, DEVONPORT & DISTRICT TRAMWAYS CO.** (1885), 52 L. T. 161; 49 J. P. 405, C. A.

3715. — Entrusting special powers to public body.—In an action for an injunction to restrain deft. co. from preventing gas examiners from making tests on Sundays:—**Held**: the London County Council, as the body entrusted by a private Act of Parliament with control & management of the testing places provided by the co. were proper ptffs. & therefore it was not necessary that the action should be brought by the A.-G.—**LONDON COUNTY COUNCIL v. SOUTH METROPOLITAN GAS CO.**, [1904] 1 Ch. 76; 73 L. J. Ch. 136; 89 L. T. 618; 68 J. P. 5; 52 W. R. 161; 20 T. L. R. 83; 48 Sol. Jo. 99; 2 L. G. R. 161, C. A.

3716. Misapplication of borough funds.—**HOLDEN v. BOLTON CORPN.** (1887), 3 T. L. R. 676.

3717. Proceedings under London Building Acts.—**BROOKS v. TERRY** (1888), 4 T. L. R. 678.

3718. To representative action—Limited class interested.—Where there is a common interest & a common grievance a representative action is in order if the relief sought is in its nature beneficial to all of a limited class whom ptffs. propose to represent, & the A.-G. is not a necessary party to such an action.—**BEDFORD (DUKE) v. ELLIS**, [1901] A. C. 1; 70 L. J. Ch. 102; 83 L. T. 686; 17 T. L. R. 139, H. L.; *affg.* S. C. *sub nom.* **ELLIS v. BEDFORD (DUKE)**, [1899] 1 Ch. 494, C. A.

Annotations.—**Reid**, **West v. Sackville**, [1903] 2 Ch. 378; **Esquimaux & Nanaimo Ry. v. Wilson**, [1920] A. C. 358. **Mentd.**, **Crosfield v. Manchester Ship Canal Co.** (1904), 90 L. T. 557; **Chapman v. Michaelson**, [1909] 1 Ch. 238; **Guaranty Trust Co. of New York v. Hannay**, [1915] 2 K. B. 536; **Churchill v. Whetnall, Aberconway v. Whetnall** (1918), 119 L. T. 34.

3719. Proceedings under Open Spaces Acts.—**Semble**: an action to restrain a local authority from using a disused burial-ground for purposes other than those authorised by Open Spaces Acts should be brought in the name of the A.-G. at the relation of ptff.—**BOYCE v. PADDINGTON BOROUGH COUNCIL**, [1903] 2 Ch. 556; 72 L. J. Ch. 695; 89 L. T. 383; 68 J. P. 49; 52 W. R. 114; 19 T. L. R. 648; 47 Sol. Jo. 708; 1 L. G. R. 696, C. A.; *reusd.* on other grounds, *sub nom.* **PADDINGTON CORPN. v. A.-G.**, [1906] A. C. 1, H. L.

Annotation.—**Mentd.**, **Heath's Garage v. Hodges** (1915), 14 L. G. R. 195.

See, further, OPEN SPACES & RECREATION GROUNDS.

3720. Enforcement of municipal bye-law.—An urban authority alleged that defts. were laying out two highways as "new streets," in contravention of the bye-laws, & brought an action, to which the A.-G. was not a party, claiming an injunction to restrain them from so doing:—**Held**: ptffs. could not maintain the action without the A.-G.

be made a party to the proceedings.—**Re INVERCARGILL NORTH LICENSING DISTRICT COMMITTEE, CAMERON'S CASE** (1892), 11 N. Z. L. R. 507.—N.Z.

m. Exigi facias.—There are no words in 55 Geo. 3, c. 3, restraining the proceedings under it to the

Sect. 4.—Whether a necessary party. Sects. 5 & 6. Part XI.]

being a party.—**DEVONPORT CORPN. v. TOZER**, [1903] 1 Ch. 759; 72 L. J. Ch. 411; 88 L. T. 118; 67 J. P. 269; 52 W. R. 6; 19 T. L. R. 257; 47 Sol. Jo. 318; 1 L. G. R. 421, C. A.

Annotations.—**Apld.** *A.-G. v. Pontypridd Waterworks Co.*, [1908] 1 Ch. 388. **Refd.** *A.-G. v. Dorin*, [1912] 1 Ch. 369. **Mentd.** *A.-G. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34; *Fellowes v. Sedgley U. D. C.* (1906), 70 J. P. 412; *Watson v. Hythe B. C.* (1906), 4 L. G. R. 340; *Russell v. Midhurst R. D. C.* (1908), 98 L. T. 530; *A.-G. v. Gibb*, [1909] 2 Ch. 265.

3721. Enforcement of statutory provisions for protection of urban authority.—*A.-G. v. PONTYPRIDD WATERWORKS CO.*, [1908] 1 Ch. 388; 77 L. J. Ch. 237; 98 L. T. 275; 72 J. P. 48; 24 T. L. R. 196; 71 J. P. Jo. 616; 6 L. G. R. 39.

Annotation.—**Refd.** *A.-G. v. N. E. Ry.*, [1915] 1 Ch. 905.

See, further, LOCAL GOVERNMENT.

3722. To compel performance of public duty.—In an action by certain burgesses of a borough to restrain the council of the borough from giving a consent under the standing orders of Parliament to a bill for authorising the laying down of a tramway along a certain public highway:—**Held**: this was an action to compel the performance of a public duty, & therefore, was not maintainable without the concurrence of the A.-G.—**WATSON v. HYTHE BOROUGH COUNCIL** (1906), 70 J. P. 153; 22 T. L. R. 245; 4 L. G. R. 340.

SECT. 5.—CONSENT TO PROCEEDINGS.

3723. Effect of fiat—Discretion as to tribunal.—*A.-G. v. WILSON*, No. 3646, *ante*.

3724. Whether fiat can be obtained—After information filed.—It is irregular to obtain the fiat of the A.-G. to an information, original or amended, after it has been filed.—*A.-G. v. IRONMONGERS' CO.* (1834), 4 L. J. Ch. 5.

3725. Whether necessary—To compound penal action.—Leave of the ct. for compounding a penal action, when the Crown is entitled to a portion of the penalty, cannot be obtained without the consent of the A.-G.—*R. v. GIBBS* (1835), 3 Dowl. 345.

—**For appointment of new trustees of charity.**—*See CHARITIES*, Vol. VIII., p. 404, Nos. 2361-2364.

—**In charitable proceedings.**—*See CHARITIES*, Vol. VIII., pp. 395-397, 404, Nos. 2186, 2194, 2196-2200, 2206, 2211, 2212, 2358-2368.

3726. Proceedings by local authority—Public nuisance—Absence of special damage.—Proceedings taken under Public Health Act, 1875 (c. 55), s. 107, must be ordinary proceedings known to the law, & in the absence of special damage a local authority cannot sue in respect of a public

nuisance except with the sanction of the A.-G. by action in the nature of an information.—**WALLASEY LOCAL BOARD v. GRACEY** (1887), 36 Ch. D. 593; 56 L. J. Ch. 739; 57 L. T. 51; 51 J. P. 740; 35 W. R. 694.

Annotations.—**Apprvd.** *Tottenham U. D. C. v. Williamson*, [1896] 2 Q. B. 353. **Follid.** *Stoke Parish Council v. Price*, [1899] 2 Ch. 277. **Mentd.** *Sheringham U. D. C. v. Holsey* (1904), 91 L. T. 225.

3727. S. P. TOTTENHAM URBAN DISTRICT COUNCIL v. WILLIAMSON & SONS, [1896] 2 Q. B. 353; 65 L. J. Q. B. 591; 75 L. T. 238; 60 J. P. 725; 44 W. R. 676, C. A.

Annotations.—**Refd.** *Stoke Parish Council v. Price*, [1899] 2 Ch. 277; *Sheringham U. D. C. v. Holsey* (1904), 91 L. T. 225.

3728. — To prosecution under Explosive Substances Act, 1883 (c. 3), s. 7 (1).—If the consent of the A.-G. has not been obtained to a prosecution under the above Act, as required under sect. 7 (1) of that Act, the ct. has no jurisdiction to try, & in such a case the proviso to Criminal Appeal Act, 1907 (c. 73), s. 4 (1), does not apply.

Semble: it is not necessary on every occasion to give formal proof of the A.-G.'s signature.—*R. v. BATES*, [1911] 1 K. B. 964; 80 L. J. K. B. 507; 104 L. T. 688; 75 J. P. 271; 27 T. L. R. 314; 55 Sol. Jo. 410; 22 Cox, C. C. 459; 6 Cr. App. Rep. 153, C. C. A.

Annotation.—**Distd.** *R. v. Metz* (1915), 84 L. J. K. B. 1462.

See, further, EXPLOSIVES.

—**To writ of sci. fa. to repeal letters patent.**—*See CONSTITUTIONAL LAW*, Vol. XI., p. 512, No. 131.

3729. Proof of signature—Whether formal proof necessary.—*R. v. BATES*, No. 3728, *ante*.

3730. ——**A conviction for an offence under Trading with the Enemy Act, 1914 (c. 87), s. 1, shall not be quashed merely because formal proof of the consent of the A.-G. to the prosecution has not been given at the trial.**—*R. v. METZ* (1915), 84 L. J. K. B. 1462; 113 L. T. 464; 79 J. P. 384; 59 Sol. Jo. 457; 25 Cox, C. C. 67; 11 Cr. App. Rep. 164, C. C. A.

3731. Amendment of action—Into information & action.—An action may by amendment of the writ & statement of claim be turned into an information & action without prejudice to a pending motion in the action, the necessary sanction of the A.-G. being obtained.—**CALDWELL v. PAGHAM HARBOUR RECLAMATION CO.** (1876), 2 Ch. D. 221; 45 L. J. Ch. 796; 24 W. R. 690; 3 Char. Pr. Cas. 119.

Annotation.—**Mentd.** *Ward v. Sheffield Corpn.* (1887), 19 Q. B. D. 22.

Compromise of charity proceedings requiring sanction of Attorney-General.—*See CHARITIES*, Vol. VIII., p. 401, Nos. 2293 *et seq.*

Control by Attorney-General of charity proceedings.—*See CHARITIES*, Vol. VIII., p. 396, Nos. 2195-2200.

Consent to appointment of new relators.—*See CHARITIES*, Vol. VIII., p. 396, Nos. 2206-2212.

superintendence of the Crown officers.—*R. v. ELROD* (1824), Tay. 120.—**CAN.**
n. *Scire facias*.—Petitioners for receivers on tenants' & receivers' recognisances should be entitled in the name of the Queen, & the A.-G. should be petitioner.—*R. v. CRUISE* (1852), 2 L. Ch. R. 65.—**IR.**

PART X. SECT. 5.

o. **Whether necessary—To proceedings to declare void land patents.**—**FARAH v. GLEN LAKE MINING CO.** (1908), 17 O. L. R. 1; 11 O. W. R. 1020.—**CAN.**

p. **To charge by Deputy**

Attorney-General.—*R. v. DUFF* (1909), 12 W. L. R. 290.—**CAN.**

q. **To prosecution under Statutes of Canada, 1909, c. 9.**—*R. v. SPERDAKES* (1911), 9 E. L. R. 433.—**CAN.**

r. **To prosecution under Dominion Lord's Day Act.**—*R. v. THOMPSON, R. v. HAMMOND, R. v. CHURCHILL, R. v. AHERNS* (1913), 25 W. L. R. 576; 14 D. L. R. 175; 22 Can. Crim. Cas. 78; 7 Alta. L. R. 40.—**CAN.**

s. **To appeal under Habeas Corpus Act.**—The absence of a certificate from the A.-G. required by

the Act as a condition of an appeal does not prevent the ct. from hearing an appeal.—*R. v. MARTIN* (1913), 41 O. L. R. 79; 13 O. W. N. 187; 29 Can. Crim. Cas. 189; 39 D. L. R. 635.—**CAN.**

t. **To obtain copy record of court of general sessions.**—The books, etc. of ct. of general sessions are public documents, which everyone interested has a right to see, & deft. is entitled to a copy of the record of acquittal, & it is not necessary to obtain the fiat of the A.-G. therefor.—*A.-G. v. SCULLY* (1902), 4 O. L. R. 394.—**CAN.**

SECT. 6.—COSTS FOR AND AGAINST.

See, generally, CONSTITUTIONAL LAW, Vol. XI., pp. 530–535, Nos. 341–378.

In actions relating to charities.—*See* CHARITIES, Vol. VIII., pp. 408, 409, 413, Nos. 2448–2450, 2452–2460, 2530–2532.

Under Legitimacy Declaration Act, 1858 (c. 93).—*See* BASTARDY, Vol. III., p. 370, Nos. 119–121.

3732. General rule.—Where the A.-G. sues as an officer of the Crown, in right of the Crown, he does not pay costs (LORD LYNDHURST, C.).—LONDON CORPN. v. A.-G. (1848), 1 H. L. Cas. 440; 9 E. R. 829, H. L.; *affg.* S. C. *sub nom.* A.-G. v. LONDON CORPN. (1845), 8 Beav. 270.

Annotations.—*Apld.* Smith v. Stair (1849), 2 H. L. Cas. 807. *Consd.* A.-G. v. London Corpn. (1850), 2 Mac. & G. 247. *Mentd.* A.-G. v. Haling (1846), 15 M. & W. 687; Horton v. Bott (1857), 26 L. J. Ex. 267; A.-G. v. Edmunds (1868), L. R. 6 Eq. 381.

3733. —.]—In a petition under Legitimacy Declaration Act, 1858 (c. 93), the A.-G., who was resp., applied to the ct. to order petitioner to give security for costs on the ground that she resided out of the jurisdiction. The ct. declined to make the order on the ground that as it had no power to award costs to the A.-G. if he should be successful in opposing the petition, it could not on his application order petitioner to give security for costs.—SHEDDEN v. A.-G. (1867), 36 L. J. P. & M. 132; 16 L. T. 746; 15 W. R. 1093.

3734. In actions by Attorney-General at instance of relator.—In a suit by the Crown upon a bond under 33 Geo. 3, c. 71, the ct. cannot give costs against the Crown, although the farmer of the duties is the real party. *Aliter* in the cases of informations by the A.-G. at the relation of an individual.—R. v. CORUM (1792), 1 Aust. 50; 145 E. R. 797.

Annotation.—*Apld.* R. v. Bingham (1831), 1 Cr. & J. 379.

3735. Where action not determined.—A.-G. v. WILLIAMSON, No. 315, *ante*.

3736. Appeal from judgment awarding costs.—(1) The Lord Advocate of Scotland, or other officer of the Crown, suing on behalf of the Crown, or in matters in which the Crown is interested, is not liable to pay costs to the opposite party, even though the suit may have been improperly instituted.

(2) Against any judgment awarding such costs an appeal may be brought notwithstanding the general rule that no appeal lies for costs.—LORD ADVOCATE v. DUNGLAS (LORD) (1842), 9 Cl. & Fin. 173; 4 State Tr. N. S. 737; 8 E. R. 381, H. L.

Annotations.—*As to* (1) *Refd.* The Leda (1863), Brown. & Lush. 19; R. v. Canterbury Archbp., [1902] 2 K. B. 503. *Generally, Mentd.* R. v. O'Connell (1844), 5 State Tr. N. S. 1; Secretary of State for India v. Kamachee Boye Sahaba (1859), 13 Moo. P. C. C. 22.

Part XI.—Costs.

Crown's right to or liability for.—*See* CONSTITUTIONAL LAW, Vol. XI., pp. 530–535, Nos. 341–378.

Actions for & against Attorney-General.—*See* Part X., Sect. 6, *ante*.

Certiorari.—To remove for trial in civil cases.]—*See* Part IX., Sect. 9, sub-sect. 1, I., *ante*.

—To remove indictments for trial.]—*See* Part IX., Sect. 9, sub-sect. 2, J., *ante*.

—To quash.]—*See* Part IX., Sect. 9, sub-sect. 3, N., *ante*.

—To remove orders on case stated.]—*See* Part IX., Sect. 9, sub-sect. 5, *ante*.

Extents.—In chief.]—*See* Part I., Sect. 2, sub-sect. 3, L., *ante*.

—In aid.]—*See* Part I., Sect. 2, sub-sect. 5, G., *ante*.

Habeas corpus.—*See* Part V., Sect. 1, sub-sect. 4, I., *ante*.

Latin informations.—*See* Part I., Sect. 1, sub-sect. 4, F., *ante*.

Mandamus.—*See* Part VI., Sect. 6, sub-sect. 10, *ante*.

Prohibition.—*See* Part VIII., Sect. 8, sub-sect. 11, *ante*.

Quo warranto.—*See* Part VII., Sect. 6, *ante*.

3737. Effect of Judicature Acts.—R. v. PARLBY (2), No. 3584, *ante*.

3738. —.]—The practice in proceedings on the Crown side of Q. B. Div. is unaltered by the Jud. Act, 1890 (c. 44), & there is, therefore, no power to give costs to a successful applt. in a case stated by quarter sessions.

PART X. SECT. 6.

a. *Where Attorney-General made a party by direction of court.*—Costs will be given to the A.-G., on whom notice has been served by direction of the ct., though decision against the Crown.—*Re* BELFAST TOWN COUNCIL, *Ex p.* SAYERS (1884), 13 L. R. Ir.

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b. *Where costs awarded.*—*Whether counsel's & solicitor's fees allowed.*—As the statutes defining the duties & salaries of the A.-G. & his deputy deny additional compensation for services rendered by them in connection with litigation affecting the Crown it is

improper to allow counsel's or solr.'s fees in respect of services rendered in such capacities by either of these officers on taxation of costs awarded in favour of the Crown.—HAMBURG-AMERICAN PACKET CO. v. R. (1907), 39 S. C. R. 621.—CAN.

In former times a case like this would have been brought up by a *certiorari*. The *certiorari* has been dispensed with by Act of Parliament, & therefore, is no longer necessary; but the case stands precisely in the same position as if it had been brought up by *certiorari*. What would have been the state of things if it had been brought up by *certiorari*? There would have been no inherent or original jurisdiction in the cts. to deal with costs. The only jurisdiction they would have would be under a statute or under the recognisances. There is no jurisdiction by any statute; therefore, it follows that the only jurisdiction to deal with costs would be under the recognisance. But then the recognisance only applies where the order is affirmed. If the order is affirmed the successful party obtains costs under the recognisance; if the order is quashed there are no costs. That was the state of things before Judicature Acts. In my opinion the Acts have introduced no change (LOPES, L.J.).—LONDON COUNTY COUNCIL v. WEST HAM (CHURCHWARDENS) (2), [1892] 2 Q. B. 173; 61 L. J. M. C. 210; 67 L. T. 363; 56 J. P. 662; 40 W. R. 662; 8 T. L. R. 593, C. A.

Annotations. *Distd.* R. v. Jones, [1894] 2 Q. B. 382; R. v. London County J.J. & L. C. C., [1894] 1 Q. B. 453. *Fold.* R. v. Egerton, *Ex p.* Munby (1902), 46 Sol. Jo. 452. *Distd.* R. v. Woodhouse, [1906] 2 K. B. 501. *Refd.* Halkyn District Mines Drainage Co. v. Holywell Union (1893), 9 R. 779; L. C. C. v. Woolwich Assmt. Com., L. C. C. v. St. George's Assmt. Com., [1893] 1 Q. B. 210. *Mentd.* *Re* Fisher, [1894] 1 Ch. 53; James v. Jones (1894), 10 T. L. R. 208.

3739. —.]—The right to grant prohibition

not being a jurisdiction belonging exclusively to the Crown side of Q. B. Div., the High Ct., in making a rule absolute for a prohibition without pleadings, may make an order for costs.—*R. v. LONDON COUNTY JJ. & LONDON COUNTY COUNCIL*, [1894] 1 Q. B. 453; 63 L. J. Q. B. 301; 70 L. T. 148; 58 J. P. 380; 42 W. R. 225; 10 T. L. R. 189; 9 R. 148, C. A.; *affg.*, [1893] 2 Q. B. 476, D. C.

Annotations :—*Appl. R. v. Jones*, [1894] 2 Q. B. 382; *R. v. Woodhouse*, [1906] 2 K. B. 501. *Mentd. R. v. London County JJ. & L. C. C.* (1893), 69 L. T. 682.

3740. —.]—Since the commencement of Jud. Act, 1890 (c. 44), the ct. when granting an application for a *habeas corpus*, has jurisdiction, by sect. 5 of that Act, to order payment by deft. of the costs of the application, & such jurisdiction is not affected by the provisions of sect. 4.—*R. v.*

JONES, [1894] 2 Q. B. 382; 63 L. J. Q. B. 356; 58 J. P. 733; 42 W. R. 607; 10 T. L. R. 502; 10 R. 287; *sub nom. R. v. MANSEL-JONES*, 70 L. T. 845, D. C.

Annotation :—*Consd. R. v. Woodhouse*, [1906] 2 K. B. 501.

3741. —.]—*R. v. HAIN, ETC., LICENSING JJ.* (1896), 12 T. L. R. 323; 40 Sol. Jo. 458, D. C.

Annotations :—*Reid. R. v. Woodhouse*, [1906] 2 K. B. 501.

Mentd. R. v. Sunderland JJ., [1901] 2 K. B. 357.

3742. —.]—*R. v. GEE* (1901), 17 T. L. R. 374, D. C.

Annotation :—*Reid. R. v. Woodhouse*, [1906] 2 K. B. 501.

3743. —.]—*R. v. WOODHOUSE*, No. 2421, *ante*.

3744. Application of Public Authorities Protection Act, 1893 (c. 61)—Costs between solicitor & client.]—*ROBERTS v. BATTERSEA METROPOLITAN BOROUGH*, No. 3596, *ante*.

CROWN RIGHTS.

See CONSTITUTIONAL LAW.

CRUELTY.

See HUSBAND AND WIFE.

CRUELTY TO ANIMALS.

See ANIMALS.

CRUELTY TO CHILDREN.

See CRIMINAL LAW AND PROCEDURE ; INFANTS AND CHILDREN

CUL DE SAC.

See HIGHWAYS, STREETS AND BRIDGES.

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See ECCLESIASTICAL LAW.

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CURRENCY.

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CURRENCY PAYMENT OF DEBT.

See CONFLICT OF LAWS ; CONTRACT ; MONEY AND MONEY-LENDING.

CURTESY.

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CUSTODY OF CHILDREN.

See BASTARDY ; HUSBAND AND WIFE ; INFANTS AND CHILDREN.

CUSTODY OF DEEDS.

See MORTGAGE ; SALE OF LAND ; SETTLEMENTS.

CUSTODY OF PARISH DOCUMENTS.

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END OF VOL. XVI.

